S T A T E   O F   N E W   Y O R K

3109--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 22, 2015

Introduced by M. of A. MORELLE, STIRPE, HEVESI, ZEBROWSKI, MOSLEY, SKOUFIS, FAHY, CUSICK, ABINANTI, ORTIZ -- Multi-Sponsored by -- M. of A. BRABENEC, SEPULVEDA -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to clarifying methods for the payment of wages and authorizing the payment of wages by use of payroll cards

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The section heading of section 192 of the labor law, as amended by chapter 301 of the laws of 1974, is amended to read as follows:

[Cash payment] PAYMENT of wages.

S 2. Subdivision 1 of section 192 of the labor law, as added by chapter 475 of the laws of 1981 and as renumbered by chapter 170 of the laws of 1994, is amended to read as follows:

1. [No employer shall without the advance written consent of any employee directly pay or deposit the net wage or salary of such employee in a bank or other financial institution.] WAGES SHALL BE PAID USING ONE OR MORE OF THE FOLLOWING METHODS:

A. IN LAWFUL MONEY OF THE UNITED STATES;

B. BY CHECK PAYABLE AT FACE VALUE UPON DEMAND IN LAWFUL MONEY OF THE UNITED STATES;

C. BY ELECTRONIC AUTOMATED FUND TRANSFER IN LAWFUL MONEY OF THE UNITED STATES INTO AN ACCOUNT IN THE NAME OF THE EMPLOYEE AT A FINANCIAL INSTITUTION DESIGNATED BY THE EMPLOYEE; PROVIDED THAT THE EMPLOYEE VOLUNTARILY GIVES WRITTEN OR ELECTRONIC AUTHORIZATION IN ADVANCE TO RECEIVE HIS OR HER WAGES IN THIS MANNER; OR

D. BY CREDIT TO A PAYROLL CARD ACCOUNT IN ACCORDANCE WITH SECTION ONE HUNDRED NINETY-TWO-A OF THIS ARTICLE, PROVIDED THAT THE EMPLOYEE VOLUN-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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TARILY GIVES WRITTEN OR ELECTRONIC AUTHORIZATION IN ADVANCE TO RECEIVE HIS OR HER WAGES IN THIS MANNER.

S 3. The labor law is amended by adding a new section 192-a to read as follows:

S 192-A. PAYMENT OF WAGES USING PAYROLL CARDS. 1. AS USED IN THIS SECTION:

A. "PAYROLL CARD" MEANS A PREPAID CARD USED BY AN EMPLOYEE TO ACCESS WAGES FROM A PAYROLL CARD ACCOUNT;

B. "PAYROLL CARD ACCOUNT" MEANS A PREPAID ACCOUNT THAT IS DIRECTLY OR INDIRECTLY ESTABLISHED THROUGH AN EMPLOYER AND TO WHICH TRANSFERS OF THE EMPLOYEE'S WAGES, SALARY OR OTHER COMPENSATION ARE MADE; AND

C. "PAYROLL CARD ISSUER" MEANS A FINANCIAL INSTITUTION OR OTHER ENTITY THAT ISSUES A PAYROLL CARD TO EMPLOYEES ON BEHALF OF THEIR EMPLOYER.

2. CONSENT TO RECEIVE WAGES BY CREDIT TO A PAYROLL CARD ACCOUNT SHALL NOT BE MADE A CONDITION OF HIRE OR A CONDITION OF CONTINUED EMPLOYMENT.

3. A PAYROLL CARD PROGRAM OFFERED BY AN EMPLOYER SHALL BE ASSOCIATED WITH A NETWORK OF AUTOMATED TELLER MACHINES THAT ASSURES THE AVAILABILITY OF A SUBSTANTIAL NUMBER OF IN-NETWORK ATMS IN THE STATE.

4. IF AN EMPLOYER PAYS WAGES TO EMPLOYEES BY CREDIT TO A PAYROLL CARD:

A. EXCEPT AS PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION, EMPLOYEES MUST BE ABLE TO MAKE AT LEAST ONE WITHDRAWAL OR TRANSFER FROM THE PAYROLL CARD ACCOUNT IN EACH PAY PERIOD WITHOUT CHARGE FOR ANY AMOUNT UP TO AND INCLUDING THE FULL AMOUNT OF THE EMPLOYEE'S NET WAGES FOR THE PERIOD AND ONE WITHDRAWAL AT AN IN-NETWORK ATM EACH PAY PERIOD WITHOUT CHARGE.

B. IF WAGES ARE PAID MORE FREQUENTLY THAN WEEKLY, EMPLOYEES MUST BE ABLE TO MAKE AT LEAST ONE WITHDRAWAL OR TRANSFER EACH WEEK WITHOUT CHARGE FOR ANY AMOUNT UP TO AND INCLUDING THE FULL AMOUNT OF THE EMPLOYEE'S NET WAGES FOR THAT WEEK AND ONE WITHDRAWAL AT AN IN-NETWORK ATM EACH PAY PERIOD WITHOUT CHARGE.

5. EMPLOYERS WHO USE PAYROLL CARDS TO DELIVER WAGES OR OTHER COMPENSATION TO THEIR EMPLOYEES MUST ALSO PROVIDE EMPLOYEES WITH THE OPTION OF RECEIVING THEIR WAGES OR OTHER COMPENSATION BY CHECK AND ELECTRONIC FUND TRANSFER IN ACCORDANCE WITH SECTION ONE HUNDRED NINETY-ONE-C OF THIS ARTICLE.

6. AN EMPLOYEE WHO RECEIVES WAGES BY CREDIT TO A PAYROLL CARD MUST BE PROVIDED WITH THE FOLLOWING:

A. A MEANS OF CHECKING THE EMPLOYEE'S PAYROLL CARD ACCOUNT BALANCES THROUGH AN AUTOMATED TELEPHONE SYSTEM AND ONE ADDITIONAL ELECTRONIC MEANS, WITHOUT COST IRRESPECTIVE OF NUMBER OF INQUIRIES MADE.

B. ACCESS TO AN ELECTRONIC TRANSACTION HISTORY THAT INCLUDES ALL DEPOSITS, WITHDRAWALS, DEDUCTIONS, OR CHARGES BY ANY ENTITY FROM OR TO THE EMPLOYEE'S PAYROLL CARD ACCOUNT AT NO COST TO THE EMPLOYEE. THE EMPLOYEE SHALL BE PROVIDED A WRITTEN TRANSACTION HISTORY AT NO COST UPON REQUEST.

C. AT THE EMPLOYEE'S REQUEST, ONE REPLACEMENT CARD PER YEAR WITHOUT COST, EXCEPT THAT A FEE MAY BE CHARGED FOR THE COST OF EXPEDITED DELIVERY OF A REPLACEMENT PAYROLL CARD IF THE EMPLOYEE REQUESTS SUCH DELIVERY.

7. WHEN OFFERING AN EMPLOYEE THE OPTION OF RECEIVING WAGES BY CREDIT TO A PAYROLL CARD ACCOUNT, AN EMPLOYER MUST PROVIDE THE EMPLOYEE WITH NOTICE OF THE FOLLOWING ITEMS IN PAPER OR PRINTABLE FORM. NOTICE MUST BE PROVIDED IN THE LANGUAGES THE EMPLOYER NORMALLY USES TO COMMUNICATE EMPLOYMENT-RELATED POLICIES TO THEIR EMPLOYEES.

A. A LISTING OF ALL METHODS OF WAGE PAYMENT OFFERED BY THE EMPLOYER IN ACCORDANCE WITH SECTION ONE HUNDRED NINETY-TWO OF THIS ARTICLE;

B. THE TERMS AND CONDITIONS RELATING TO USE OF THE PAYROLL CARD, INCLUDING A LIST OF FEES THAT MAY BE ASSESSED BY THE PAYROLL CARD ISSUER;

C. THE METHODS AVAILABLE TO EMPLOYEES FOR ACCESSING WAGES WITHOUT COSTS;

D. THE METHODS AVAILABLE TO EMPLOYEES FOR CHECKING THE BALANCE IN THE PAYROLL CARD ACCOUNT WITHOUT COST; AND

E. A STATEMENT THAT THIRD PARTIES MAY ASSESS TRANSACTION FEES IN ADDITION TO THE FEES ASSESSED BY THE PAYROLL CARD ISSUER.

8. AN EMPLOYER MAY NOT USE A PAYROLL CARD PROGRAM THAT CHARGES FEES FOR POINT OF SALE TRANSACTIONS; THE APPLICATION, INITIATION, LOADING OF WAGES BY THE EMPLOYER; ACCOUNT MAINTENANCE OR MONTHLY MAINTENANCE; OR MERE PARTICIPATION IN THE PAYROLL CARD PROGRAM. FEES FOR ACCOUNT INACTIVITY MAY BE ASSESSED FOLLOWING NINE MONTHS OF INACTIVITY.

9. AN EMPLOYEE PAID WAGES BY CREDIT TO A PAYROLL CARD ACCOUNT MAY REQUEST IN WRITING TO BE PAID WAGES BY ANOTHER METHOD OF PAYMENT PROVIDED BY THE EMPLOYER IN ACCORDANCE WITH SECTION ONE HUNDRED NINETY-TWO OF THIS ARTICLE. FOLLOWING THE WRITTEN REQUEST, THE EMPLOYER SHALL, WITHIN TWO PAY PERIODS, BEGIN PAYMENT TO THE EMPLOYEE BY THE ALLOWABLE METHOD REQUESTED BY THE EMPLOYEE.

10. THE PAYROLL CARD OR PAYROLL CARD ACCOUNT MAY NOT BE LINKED TO ANY FORM OF CREDIT INCLUDING, BUT NOT LIMITED TO, OVERDRAFT FEES OR OVERDRAFT SERVICE FEES, A LOAN AGAINST FUTURE PAY, OR A CASH ADVANCE ON FUTURE PAY OR WORK NOT YET PERFORMED.

11. A PAYROLL CARD PROGRAM OFFERED BY AN EMPLOYER SHALL PROVIDE THE EMPLOYEE WITH NOTICES, DISCLOSURES, ERROR RESOLUTION PROCEDURES, PROTECTIONS FROM UNAUTHORIZED USE, AND LIMITATIONS ON LIABILITY IN ACCORDANCE WITH THE ELECTRONIC FUND TRANSFER ACT, 15 U.S.C. S 1693 ET SEQ, AND REGULATION E, 29 C.F.R. PART 1005, AS MAY BE AMENDED.

12. WAGES CREDITED TO A PAYROLL CARD ACCOUNT MUST BE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE NATIONAL CREDIT UNION ADMINISTRATION, OR ANOTHER ENTITY ON A PASS THROUGH BASIS TO THE EMPLOYEE.

13. NO EMPLOYER SHALL RECEIVE ANY COMPENSATION, BONUS, REWARD OR OTHER FINANCIAL CONSIDERATION FROM A PAYROLL CARD ISSUER BASED UPON: (A) THE AMOUNT OR NUMBER OF PAYROLL CARD-RELATED FEES PAID BY THE EMPLOYER'S EMPLOYEES; OR (B) THE NUMBER OF EMPLOYEES WHO ARE PAID WAGES THROUGH A PAYROLL CARD ACCOUNT. NOTHING IN THIS SECTION SHALL PRECLUDE EMPLOYERS FROM RECEIVING ACCOUNT MATERIALS OR A BULK RATE OR VOLUME DISCOUNT BASED ON THE NUMBER OF EMPLOYEES THAT RECEIVE WAGES THROUGH A PAYROLL CARD ACCOUNT.

14.WHERE A COLLECTIVE BARGAINING AGREEMENT GOVERNS THE METHOD BY WHICH AN EMPLOYER MUST PAY WAGES TO ITS EMPLOYEES, AN EMPLOYER CANNOT SEEK CONSENT TO RECEIVE WAGES ON A PAYROLL CARD FROM ANY EMPLOYEE COVERED BY THAT COLLECTIVE BARGAINING AGREEMENT.

S 4. This act shall take effect on the ninetieth day after it shall have become a law.