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

5281

2015-2016 Regular Sessions

I N S E N A T E

May 12, 2015

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to specifying conditions for the payment of wages to employees by direct deposit to a payroll debit card

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

Section 1. Section 192 of the labor law, as amended by chapter 301 of the laws of 1974, subdivision 1 as added by chapter 475 of the laws of 1981 and renumbered by chapter 170 of the laws of 1994 and subdivision 2 as amended by chapter 304 of the laws of 2007, is amended to read as follows:

S 192. [Cash payment] PAYMENT of wages. 1. EXCEPT AS PROVIDED IN SUBDIVISIONS TWO AND FOUR OF THIS SECTION, PAYMENT OF WAGES SHALL BE IN LAWFUL MONEY OF THE UNITED STATES OR WITH CHECKS DRAWN ON FINANCIAL INSTITUTIONS WHERE SUITABLE ARRANGEMENTS ARE MADE FOR THE CASHING OF SUCH CHECKS BY EMPLOYEES WITHOUT DIFFICULTY AND FOR THE FULL AMOUNT FOR WHICH THEY WERE DRAWN.

2. 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.

[2.] AN EMPLOYER MAY ARRANGE WITH A FINANCIAL INSTITUTION OR FINANCIAL INSTITUTIONS TO PAY THE WAGES OF AN EMPLOYEE BY DIRECT DEPOSIT, PROVIDED THAT ALL OF THE FOLLOWING CONDITIONS ARE MET:

(A) THE EMPLOYEE SHALL FIRST CONSENT IN WRITING TO THE DIRECT DEPOSIT OF HIS OR HER WAGES;

(B) THE EMPLOYEE'S CONSENT AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE OBTAINED BY THE EMPLOYER WITHOUT INTIMIDATION, COERCION, OR FEAR OF DISCHARGE OR REPRISAL FOR REFUSAL TO ACCEPT THE DIRECT DEPOSIT ARRANGEMENT;

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

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(C) THE EMPLOYEE'S CONSENT AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT BE A CONDITION OF HIRE OR CONTINUED EMPLOYMENT;

(D) THE EMPLOYEE'S WAGES SO DEPOSITED SHALL BE SUBJECT TO WITHDRAWAL AND OTHER DISPOSITION BY THE EMPLOYEE TO THE SAME EXTENT AND IN THE SAME MANNER AS IF SUCH DEPOSIT HAD BEEN MADE DIRECTLY BY THE EMPLOYEE;

(E) THE EMPLOYEE SHALL BE FURNISHED WITH A STATEMENT OF DEDUCTIONS MADE FROM HIS OR HER WAGES FOR EACH PAY PERIOD SUCH DEDUCTIONS WERE MADE; AND

(F) THE EMPLOYEE SHALL, ON TIMELY NOTICE TO THE EMPLOYER, BE PERMITTED BY THE EMPLOYER TO ELECT NOT TO HAVE HIS OR HER WAGES DEPOSITED IN THE MANNER PRESCRIBED IN THIS SUBDIVISION AND TO BE PAID HIS OR HER WAGES DIRECTLY OR AS PROVIDED IN SUBDIVISION FOUR OF THIS SECTION.

3. WHEN AN EMPLOYEE WITH DIRECT DEPOSIT HAS HIS OR HER ACCOUNT DEBITED WITH A CHECK-DEPOSIT-RETURN FEE WITH REGARD TO THE DIRECT DEPOSIT OF HIS OR HER WAGES, THE EMPLOYER SHALL REIMBURSE THE EMPLOYEE AS SOON AS POSSIBLE, BUT NO LATER THAN THE NEXT REGULARLY SCHEDULED PAYDAY. REIMBURSEMENT BY THE EMPLOYER SHALL BE FOR THE FULL AMOUNT OF THE CHECK-DEPOSIT-RETURN FEE AND SHALL NOT BE PAID TO THE EMPLOYEE AS WAGES.

4. NO EMPLOYER SHALL WITHOUT THE ADVANCE WRITTEN CONSENT OF ANY EMPLOYEE DIRECTLY PAY OR DEPOSIT THE NET WAGE OR SALARY OF SUCH EMPLOYEE BY CAUSING THE AMOUNT OF SUCH EMPLOYEE'S WAGES TO BE DEPOSITED IN A PAYROLL DEBIT CARD ACCOUNT. AN EMPLOYER MAY PAY THE WAGES OF AN EMPLOYEE BY CAUSING THE AMOUNT OF SUCH EMPLOYEE'S WAGES TO BE DEPOSITED IN A PAYROLL DEBIT CARD ACCOUNT, PROVIDED THAT ALL OF THE FOLLOWING CONDITIONS ARE MET:

(A) THE EMPLOYEE SHALL FIRST CONSENT IN WRITING TO THE DEPOSIT OF HIS OR HER WAGES IN A PAYROLL DEBIT CARD ACCOUNT;

(B) THE EMPLOYEE'S CONSENT AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE OBTAINED BY THE EMPLOYER WITHOUT INTIMIDATION, COERCION, OR FEAR OF DISCHARGE OR REPRISAL FOR REFUSAL TO ACCEPT THE PAYROLL DEBIT CARD ACCOUNT DEPOSIT ARRANGEMENT;

(C) THE EMPLOYEE'S CONSENT AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT BE A CONDITION OF HIRE OR CONTINUED EMPLOYMENT;

(D) THE EMPLOYEE'S WAGES SO DEPOSITED IN A PAYROLL DEBIT CARD ACCOUNT SHALL BE SUBJECT TO WITHDRAWAL AND OTHER DISPOSITION BY THE EMPLOYEE TO THE SAME EXTENT AND IN THE SAME MANNER AS IF SUCH DEPOSIT HAD BEEN MADE DIRECTLY BY THE EMPLOYEE INTO AN ACCOUNT MAINTAINED IN A FINANCIAL INSTITUTION IN THE NAME OF THE EMPLOYEE;

(E) ON AT LEAST ONE OCCASION PER PAY PERIOD, THE EMPLOYEE SHALL BE PERMITTED, USING THE PAYROLL DEBIT CARD, TO WITHDRAW HIS OR HER WAGES IN FULL, IN LAWFUL MONEY OF THE UNITED STATES, WITHOUT ANY FEE TO THE EMPLOYEE AND WITHOUT DIFFICULTY;

(F) THE EMPLOYEE SHALL BE FURNISHED WITH A STATEMENT OF DEDUCTIONS MADE FROM HIS OR HER WAGES FOR EACH PAY PERIOD SUCH DEDUCTIONS WERE MADE; AND

(G) THE EMPLOYEE SHALL, ON TIMELY NOTICE TO THE EMPLOYER, BE PERMITTED BY THE EMPLOYER TO ELECT NOT TO HAVE HIS OR HER WAGES DEPOSITED IN THE MANNER PRESCRIBED IN THIS SUBDIVISION AND TO BE PAID HIS OR HER WAGES DIRECTLY OR IN THE MANNER PROVIDED IN SUBDIVISION TWO OF THIS SECTION.

5. AN EMPLOYER SHALL PAY THE FULL AMOUNT OF WAGES DUE HIS OR HER EMPLOYEES AT LEAST TWICE DURING EACH CALENDAR MONTH, ON REGULAR PAYDAYS DESIGNATED IN ADVANCE BY THE EMPLOYER.

6. This section shall not apply to any person employed in a bona fide executive, administrative, or professional capacity whose earnings are in excess of nine hundred dollars a week, nor to employees working on a farm not connected with a factory.

7. AS USED IN THIS SECTION:

(A) "CHECK-DEPOSIT-RETURN FEE" MEANS A CHARGE WHICH RESULTS FROM A PAYROLL CHECK HAVING BEEN RETURNED DUE TO INSUFFICIENT OR UNCOLLECTED FUNDS;

(B) "DIRECT DEPOSIT" MEANS PAYMENT OF THE WAGES OF AN EMPLOYEE BY CAUSING THE AMOUNT OF SUCH EMPLOYEE'S WAGES TO BE DEPOSITED IN AN ACCOUNT OR ACCOUNTS MAINTAINED IN A FINANCIAL INSTITUTION OR FINANCIAL INSTITUTIONS IN THE NAME OF THE EMPLOYEE;

(C) "FINANCIAL INSTITUTION" MEANS ANY STATE-CHARTERED OR FEDERALLY-CHARTERED INSTITUTION AUTHORIZED TO ACCEPT DEPOSITS IN NEW YORK; AND

(D) "PAYROLL DEBIT CARD" MEANS A MAGNETICALLY ENCODED CARD ISSUED BY A FINANCIAL INSTITUTION, WHICH PROVIDES AN EMPLOYEE WITH THE MEANS OF OBTAINING THE FULL AMOUNT OF ALL WAGES EARNED IN A PAY PERIOD IN A FORM THAT IS EQUIVALENT TO PAYMENT IN LAWFUL MONEY OF THE UNITED STATES, PAYMENT BY CHECK OR PAYMENT BY DIRECT DEPOSIT.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.