

NY DOL Appeals Revocation of Wage Payment Rules

On February 16, the New York Industrial Board of Appeals struck down regulations governing the payment of wages by direct deposit or payroll debit card that were slated to take effect March 7. The New York State Department of Labor has now filed an appeal challenging the Board’s decision. Employers that use these methods to pay wages should continue to monitor developments closely.

Background

On September 7, 2016, the New York State Department of Labor (NY DOL) adopted new [regulations](#) governing the payment of wages by direct deposit or payroll debit card. The regulations, which were to become effective March 7, 2017, imposed new rules and additional notice, consent and recordkeeping requirements on employers that use those methods to pay non-exempt employees. The regulations also contained special rules for paying wages by payroll cards. Among other things, they prohibited charging employees fees for using them.

Last year, Global Cash Card, Inc. (a payroll debit card vendor) challenged the portion of the regulations relating to the payment of wages by payroll cards. On February 16, 2017, the New York Industrial Board of Appeals (Board) concluded that the NY DOL exceeded its authority by regulating banking services and financial services products, and [revoked](#) the new wage payment rules in their entirety before they took effect. (See our [March 2, 2017 For Your Information.](#))

NY DOL Challenges Board’s Decision

On April 24, the NY DOL filed an appeal challenging the Board’s decision. In support of its appeal, the NY DOL argues that Global Cash Card lacked standing to challenge the wage payment regulations and that the Board’s decision “should be annulled because it was arbitrary and capricious, and affected by multiple errors of law.” The NY DOL asserts that the Board “fundamentally misinterpreted” the regulations by suggesting that they seek to govern financial institutions and prohibit debit card issuers from charging fees. The regulations, the NY DOL contends, only restrict employer conduct and codify earlier counsel opinion letters.



Opposing papers are due May 29, with reply papers due on June 12.

In Closing

While the appeal is pending, employers should continue to rely on prior NY DOL opinion letters and general wage payment statutes to ensure compliance. While continuing to monitor developments, employers should review their current pay practices and the use of payroll cards both in and outside of New York state.

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