Labor and Employment Alert: Do Payroll Debit Cards Violate Pennsylvania Law? Maybe, Maybe Not

Related Attorneys

Michael C. Griffaton

Related Services

Labor and Employment

CLIENT ALERT | 6.10.2015

More employers are using or considering payroll debit cards instead of paper checks or direct deposit to pay their employees. For employers, these cards may be less expensive than physical checks; for employees, these cards allow them to withdraw funds and make payments much like traditional debit cards. At the same time, however, payroll cards may impose fees for withdrawals, transfers, or inactivity, and states have begun to regulate payroll cards because of these fees. A recent case from Pennsylvania highlights the risks associated with "new" wage-hour practices.

In *Siciliano v. Mueller*, the plaintiffs worked for a McDonald's franchise and were paid solely by payroll debit card. According to the complaint, the J.P. Morgan Chase-issued payroll card imposed fees of $1.50 for ATM withdrawals, $5 for withdrawing money at a cash register, a $15 replacement fee for a lost or stolen card, a $0.75 fee for online bill payments, and even a $1 for just checking the card's balance. The plaintiffs' expert witness opined that the employees were charged about 20 separate fees per person during the class period.

The plaintiffs sought class certification in state court for violation of Pennsylvania's Wage Payment and Collection Law (WPCL), which requires that wages "be paid in lawful money of the United States or check." In May 2015, the court certified a class of 2,380 hourly employees. Thereafter, the franchise operator moved for summary judgment, arguing that the payroll debit cards are both "the functional equivalent" of money and a "check" for purposes of the WPCL. The court disagreed and denied summary judgment.

At the outset, the court noted that the WPCL was enacted in 1961 and last amended in 1977, long before payroll debit cards were used. In interpreting the law, the court focused on the plain meaning of the WPLC to find that payroll debit cards are neither "lawful money of the United States" or "checks." First, the cards are not bills and coins (and so not technically "lawful money" or "legal tender"); second, the cards are not an "unconditional written order" (and so are not technically a "check"). The court recognized that its decision "is apparently an issue of first impression" and that "reasonable minds can differ" in light of advances in technology and consumer convenience. Given this, the court certified the case for an immediate appeal so that an appellate court can determine whether payroll debit cards fall within the ambit of the WPCL.

During this litigation, the U.S. Department of Labor opened an investigation into the franchisor's payment practices. The franchisor indicated that it would no longer require its employees to use payroll debit cards. And J.P. Morgan Chase informed the employees that it would refund all of the fees associated with their use of the payroll debit cards. None of these, however, have ended the class action. The franchisor still faces potential damages under the WPCL of $1.2 million (not including its own attorney's fees).

Regulations on payroll debit cards can vary from state to state, so an employer's use of payroll debit cards in one state may not satisfy the requirements in another. In states like Pennsylvania that currently do not regulate payroll debit cards, whether their use is permitted may be subject to a judge's interpretation. Contact your Vorys lawyer if you have questions about your current payroll debit card practices or if you are considering using them for your employees.