



New York State Department of Labor
David A. Paterson, Governor
Colleen C. Gardner, Commissioner

October 6, 2010

[REDACTED]

Re: Request for Opinion
Debit Cards-[REDACTED]
RO-10-0018

Dear [REDACTED]:

I have been asked to respond to your letter dated February 3, 2010, in which you ask various questions relating to the utilization of a paperless computer system ([REDACTED]) and a direct payment card ([REDACTED]) for the payment of wages under the New York State Labor Law. Your letter states the following:

[A]ll employees, regardless of whether they currently receive a paper paycheck or receive their paychecks by direct deposit, would be issued a [REDACTED]. The [REDACTED] allows employees, with or without a bank account, to have their funds electronically loaded onto a Visa-branded debit card that they can use anywhere Visa is accepted. They also have surcharge-free access to their money at 32,000 Allpoint ATMs nationwide. Under the [REDACTED] system, all employees would be required to access, view and print exact images of their pay stub on-line.

Your letter then asks several questions which are addressed individually below:

1. *May an employer require an employee to receive their paycheck via a debit card such as the [REDACTED]?*

No. The payment of wages via debit card is governed by New York State Labor Law Sections 191, 192, and 193. Section 192(1) of the Labor Law provides that "[n]o employer shall without the advance written consent of any employee directly pay or deposit the net wage or

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salary of such employee in a bank or other financial institution." Accordingly, no employee, except those exempted under Section 192(2), may be required to accept payment of wages through either direct deposit or a debit card.

An employer is, however, permitted to *offer their employees the option* of receiving their wages or salary in the form of a debit card, but under certain conditions. Those conditions are laid out in the Department's previous opinions regarding debit/payroll cards, which are enclosed for your review. In short, the payment of wages via debit card is permissible if employees are able to obtain the full amount of their wages without encumbrances or the requirement that they incur costs or fees. Your letter states that the [REDACTED] system provides employees with surcharge-free access to their wages at 32,000 ATM machines nationwide and the cards may be used anywhere Visa is accepted. Subsequent communications with you indicates that the employees have free access to their wages via bank teller transactions. Assuming that the employees in question have reasonably convenient access to the surcharge-free ATMs and bank tellers, it appears that the plan described in your letter may be offered to employees.

2 a. May an employer require an employee to receive their paycheck stub information on-line, which can then be printed by the employee?

Yes, provided the conditions set forth below are met.

New York Labor Law §195(3) provides, in pertinent part:

Every employer shall ... furnish each employee with a statement with every payment of wages, listing gross wages, deductions and net wages, and upon the request of an employee furnish an explanation of how such wages were computed.

It has been the position of the Department of Labor that computer accessible employee wage statements are in compliance with Labor Law §195(3), under certain conditions. An employer can give employees the option of choosing to receive paystubs either in paper form or in electronic form or the employer may require the employee to receive paystubs electronically. However, if the employees are to receive their paystubs in electronic form, then the employer is required to provide the employee with the ability not only to view the paystub, but to print it as well while the employee is at work and without any cost to the employee. If the employees are not given an opportunity while at work to view as well as print their paystubs free of charge, the employer will be found in violation of Labor Law §195(3).

In addition, please note that Labor Law §191 requires full payment of wages and Labor Law §193 forbids any deductions from wages that are not for the benefit of the employee. Accordingly, employees may not be charged any fee, directly or indirectly, by any person, for the access to, or the printing of, wage statements.

2 b. Do different policies or rules apply depending on whether the employee is newly employed or an existing employee?

No, so long as the new employee has the same level of access to computer equipment as an existing employee and has been provided the requisite information to utilize such equipment to view and print pay stubs.

2c. Does an employer need an employee's consent in order to post the pay stub online?

No. However, please be advised that an employer's utilization of electronic wage statements may not, in any cognizable way, diminish the protections against release of confidential information contained on such pay stub that would otherwise be afforded to employees through the employer's use and distribution of paper wage statements. Employers should take efforts to ensure, at the very least, that the electronic statements are securely transmitted and/or stored.

2d. If the employee gives his/her consent, where an employee does not have access to a computer, is the employer required to provide a computer on Company premises so that employees can view/print the pay stubs?

Yes: please see the answer to question 2a.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. This opinion cannot be used in connection with any pending private litigation concerning the issue addressed herein. If you have any further questions, please do not hesitate to contact me.

Very truly yours,
Maria L. Colavito, Counsel

By: 

Michael Paglialonga
Assistant Attorney I

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