

**REVOKED:  
New York Appeals Board Invalidates  
Payroll Debit Card and Direct Deposit Regulations**

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On February 16, 2017, the New York State Industrial Board of Appeals (“Board”) revoked the [payroll debit card and direct deposit regulations](#) (“Regulations”) that were adopted by the New York State Department of Labor (“NYSDOL”). Thus, the Regulations, which were scheduled to take effect on March 7, 2017, will no longer become effective. At this time, the NYSDOL has not indicated whether it will appeal the Board’s decision.

The Regulations were issued on September 7, 2016, and would have (i) specified the methods by which New York employers may pay their employees and (ii) defined mandatory procedures for the use of direct deposit and payroll debit card payments.

### **The Board’s Decision**

On October 21, 2016, Global Cash Card, Inc., a payroll debit card servicing company (“GCC”), filed a petition with the Board, seeking a review of the Regulations. GCC’s petition only sought a review of specific sections of the Regulations relating to payroll debit cards, including sections regarding notice and consent, local access to facilities, ability for withdrawal, account maintenance, fees, and investigations into accounts. In its petition, GCC argued that the NYSDOL overstepped its authority in this rulemaking, and the Board agreed.

The Board issued [its decision](#), finding that the Regulations were invalid for several reasons:

- First, the Regulations on payroll debit cards were preempted by federal and state banking laws. The federal Consumer Financial Protection Bureau and the New York Department of Financial Services regulate banks and financial institutions, including fees and services associated with checking accounts and licensed check cashers.

- Second, the Board found that NYSDOL was attempting to legislate through regulations. The Board highlighted nine separate bills introduced in the New York Legislature since 2007 regarding payroll debit cards, none of which were enacted.
- Finally, the Board found that the New York Labor Law already permits employers to pay employees by payroll debit card. Previous opinion letters by the NYSDOL acknowledged that Section 192 of the Labor Law broadly permitted payment by payroll debit card in its language allowing “direct deposit of wages into a bank or other financial institution” (emphasis added).

Although the appeal dealt solely with certain portions of the Regulations regarding payroll debit cards, the Board invalidated the Regulations in their entirety, stating, “The regulations regarding methods of payment of wages adopted September 7, 2016 to be codified as 12 NYCRR part 192 are revoked . . . .”

### **What Employers Should Do Now**

Employers that were preparing for the March 7, 2017, deadline are no longer required to comply with the Regulations. In particular, and among other requirements, New York employers are no longer required to:

- prepare new notice and consent forms for new hires;
- provide new notices to employees currently being paid via direct deposit, giving them the right to withdraw consent; and
- ensure compliance with any payroll debit card issuers on the regulated topics, including fees, withdrawal limits, notice, and replacement cards.

Importantly, while the NYSDOL has not indicated whether it will appeal the Board’s decision, further action may be taken in the form of new rulemaking or by the New York State Legislature.

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