

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

GLOBAL CASH CARD, INC., :

Petitioner, :

DOCKET NO. PR 16-120

To Review Under Section 101 of the Labor Law: :
REGULATIONS REGARDING METHODS OF :
PAYMENT OF WAGES ADOPTED SEPTEMBER 7, :
2016 TO BE CODIFIED AS PART 192 OF TITLE 12 :
OF THE NEW YORK CODE OF RULES AND :
REGULATIONS; :

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :
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APPEARANCES

Hinman Straub P.C., Albany (*David B. Morgen* of counsel), for petitioner.

Pico Ben-Amotz, General Counsel, NYS Department of Labor, Albany (*Michael O. Paglialonga* of counsel), for respondent.

WHEREAS:

On October 21, 2016, petitioner Global Cash Card, Inc. filed a petition with the Industrial Board of Appeals pursuant to Labor Law § 101 for review of regulations related to methods of payment of wages adopted by respondent Commissioner of Labor on September 7, 2016. Respondent filed an answer to the petition on November 23, 2016, and petitioner filed a reply to the answer on December 14, 2016. The parties filed a stipulated record on December 13, 2016 pursuant to Board Rule (12 NYCRR) § 65.37. The parties filed legal briefs on January 12, 2017, and upon notice to the parties, oral arguments were heard by the Board on January 25, 2017, at the Board's offices in New York, New York. The petition alleges the regulations are invalid or unreasonable because they exceed respondent's authority and violate separation of powers between the executive and state legislature, are preempted by federal banking law, and include vague and unreasonable provisions. We find as discussed below that the regulations are invalid and we revoke them.

THE REGULATIONS ON REVIEW

The regulations on review regarding methods of payment of wages were adopted by respondent on September 7, 2016, and are to be codified as 12 NYCRR part 192. Petitioner does not allege respondent failed to follow the State Administrative Procedure Act in proposing and adopting the challenged regulations. The specific rules challenged read as follows:

“§ 192-1.2 Definitions

“For the purposes of this part:

“(a) Payroll Debit Card shall mean a card that provides access to an account with a financial institution established directly or indirectly by the employer, and to which transfers of the employee’s wages are made on an isolated or recurring basis.

“

“(d) Local Access shall mean that the employee is provided with access to his or her wages, at a facility or machine which is located within a reasonable travel distance to the employee’s work location or home, and without unreasonable restraint by the employer or its agent.

“

“§ 192-1.3 Written Notice and Consent

“

“(d) Language. The written notice and written consent shall be provided in English and in the primary language of the employee when a template notice and consent in such language is available from the commissioner.

“§ 192-1.4 Prohibited practices

“An employer and its agent shall not engage in unfair, deceptive or abusive practices in relation to the method or methods of payment of wages. No employer or his agent, or the officer or agent of any corporation, shall discharge, penalize or in any other manner discriminate against any employee because such employee has not consented to receive his or her wages through direct deposit or payroll debit card.

“§ 192-2.1 Payment of Wages by Check

“When paying wages by check, an employer shall ensure that:

“(a) The check is a negotiable instrument; and

“(b) The employer does not impose any fees in connection with the use of checks for the payment of wages, including a fee for replacement of a lost or stolen check.

“

“§ 192-2.3 Payment of Wages by Payroll Debit Card

“(a) When paying wages by payroll debit card, an employer shall ensure that:

“

“(2) It provides the information referenced in Section 192-1.3(a) of this Part and receives consent at least seven business days prior to taking action to issue the payment of wages by payroll debit card, during such seven business days the employee’s consent shall not take effect.

“(b) An employer shall not deliver payment of wages by payroll debit card unless each of the following is provided:

“(1) Local Access to one or more automated teller machines that offers withdrawals at no cost to the employee;

“(2) At least one method to withdraw up to the total amount of wages for each pay period or balance remaining on the payroll debit card without the employee incurring a fee;

“(c) An employer or agent shall not charge, directly or indirectly, an employee a fee for any of the items listed in this subsection. Inclusion in this subsection does not impose any separate or independent obligation to provide services, nor does it relieve an employer or agent from compliance with this Part or any Federal or State law or regulations:

“(1) Application, initiation, loading, participation or other action necessary to receive wages or to hold the payroll debit card;

“

“(4) Account inactivity;

“(5) Maintenance;

“(6) Telephone or online customer service;

“(7) Accessing balance or other account information online, by Interactive Voice Response through any other automated system offered in conjunction with the payroll debit card, or at any ATM in network made available to the employee;

“(8) Providing the employee with written statements, transaction histories or the issuer’s policies;

“

“(10) Closing an account or issuing payment of the remaining balance by check or other means; or

“(11) Declined transactions at an Automated Teller Machine that does not provide free balance inquiries.

“

“(g) At least thirty days before any change in the terms and conditions of a payroll debit card takes effect, an employer must provide written notice in plain language, in the employee’s primary language or in a language the employee understands, and in at least 12-point font of any change to the terms or conditions of the payroll debit card account including any changes in the itemized list of fees. If the issuer charges the employee any new or increased fee before 30 days after the date the employer has provided the employee with written notice of the change in accordance with the provisions of

this subsection, the employer must reimburse the employee for the amount of that fee.

“(h) Where an employee is covered by a valid collective bargaining agreement that expressly provides the method or methods by which wages may be paid to employees, an employer must also have the approval of the union before paying by payroll card.”

The regulations go into effect on March 7, 2017.

STATUTORY AUTHORITY

Labor Law § 101 (1) provides in relevant part that:

“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any . . . regulation . . . made by the commissioner under the provisions of this chapter. Such petition shall be filed with the board no later than sixty days after the issuance of such . . . regulation.”

Labor Law § 21 (11) provides in relevant part that the Commissioner of Labor “[m]ay issue such regulations governing any provision of [the Labor Law] as he finds necessary and proper.”

Labor Law § 191 states in relevant part that:

“1. Every employer shall pay wages in accordance with the following provisions

“a. Manual worker.--(i) A manual worker shall be paid weekly and not later than seven calendar days after the end of the week in which the wages are earned; provided however that a manual worker employed by an employer authorized by the commissioner pursuant to subparagraph (ii) of this paragraph or by a non-profitmaking organization shall be paid in accordance with the agreed terms of employment, but not less frequently than semi-monthly.

“

“d. Clerical and other worker.--A clerical and other worker shall be paid the wages earned in accordance with the agreed terms of employment, but not less frequently than semi-monthly, on regular pay days designated in advance by the employer.

“2. No employee shall be required as a condition of employment to accept wages at periods other than as provided in this section.”

Labor Law § 192 (1) provides that “[n]o 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.”

Labor Law § 199 provides that “[t]he commissioner may issue such rules and regulations as he determines necessary for the purposes of carrying out the provisions of [Article 6].”

STANDING UNDER LABOR LAW § 101

We reject respondent’s challenge to petitioner’s standing. Petitioner is a Nevada corporation with a principal place of business in Irvine, California. Petitioner is a payroll debit card vendor providing custom payroll debit card programs to employers in New York. Respondent alleges petitioner does not have standing to petition the Board for review of the regulations. We disagree. Petitioner has standing in this proceeding as an “interested person” because the regulations govern the conduct of petitioner inasmuch as it is an “agent” of employers it has contracted with to issue payroll debit cards to employees in New York (*see* Labor Law § 101 [1] [any person in interest may petition the Board for review of the validity or reasonableness of any regulation made by the Commissioner of Labor under the Labor Law]).

STIPULATED RECORD

On December 13, 2016, the parties filed a stipulated record pursuant to Board Rule (12 NYCRR) § 65.37. The record contains 987 pages, and consists of the text of the regulations under review, 12 NYCRR part 192; eight opinion letters issued by respondent between 2001 and 2010 on the subject of payment of wages by payroll debit card; notice of proposed rulemaking published May 27, 2015; revised notice of proposed rulemaking published October 28, 2015; second revised notice of rulemaking published June 15, 2016; notice of adoption of 12 NYCRR part 192 published September 7, 2016; written public comments in support of and opposed to the proposed regulations; the Governor’s press release published May 27, 2015; the Governor’s press release published September 8, 2016; reply affidavit of Joseph M. Purcell, chief operating officer of Global Cash Card, Inc.; and Global Cash Card’s payroll debit card terms and conditions.

A January 15, 2010 opinion letter by respondent concerning payment of wages by payroll debit card reads in relevant part that:

“the payment of wages via debit cards is governed by Sections 191, 192, and 193 of the Labor Law. As relevant to this follow-up inquiry, Section 191 requires the timely payment in full of an employee’s agreed upon wages without encumbrances. In this regard, the Department interprets that Section to require that employees paid via debit card be provided with an effective means by which to make an unlimited number of withdrawals on that card without incurring fees. Such withdrawals may be provided by a bank teller and/or through the use of ATMs. For example, if employees are able to make withdrawals from a bank teller, the employer is not required to ensure any free ATM transactions,”

(DOL opinion letter No. RO-09-0158 [January 15, 2010]).

By notice of proposed rulemaking published May 27, 2015, respondent proposed to add Part 192 to Title 12 NYCRR on the subject of methods of payment of wages, including payment of wages by payroll debit card. The notice explained that the regulation “provides clarification and specification as to the permissible methods of payment, including payroll debit cards” and “provides clear rules governing the payment of wages via payroll debit cards, a method of payment that was not specifically addressed in anything other than Departmental guidance document.”

In a revised notice of proposed rulemaking published October 28, 2015, respondent made several changes to the language of the proposed regulations based on public comments received during the comment period. Respondent received comments expressing concern that respondent was making rules regulating financial services. The revised notice of rulemaking stated with respect to such comments:

“Comment 15:

“The proposed rule transfers banking law compliance onto employers.

“Response 15:

“The Department disagrees. The proposed rule is concerned with Labor Law requirements, not banking law requirements.”

Senator Martins, chairperson of the Senate Standing Committee on Labor and Senator Murphy, chairperson of the Senate Administrative Regulations Review Commission, together, submitted a public comment, dated July 28, 2015, stating in relevant part:

“The Department cites Labor Law-sections 21 and 199 as its statutory authority to promulgate methods of payment of wages regulations. After researching sections 21 and 199, we are concerned that the Department has overstepped its statutory authority by attempting to regulate the specifics surrounding the use of payroll cards or pay cards.

“A payroll card account is a financial service product like any other checking or savings account offered by a financial institution. After providing free and clear access to an employee’s wages once per pay period, the following requirements placed on a payroll card account appear to be beyond the Department’s authority: unlimited in-network withdrawals, payroll statements to be monthly or every 3 months for periods of inactivity (paper or electronic at the employee’s discretion), unlimited transaction histories for 12 months (paper or electronic at the employee’s discretion), and daily or per transaction electronic balance notifications. In addition, prohibitions on fees for declined transactions, other transactions, account inactivity, written statements and in-network ATM balance inquiries appear to be beyond DOL’s authority to regulate.

“DOL seeks to adopt regulations that are duplicative of, or in conflict with, federal regulations. The Consumer Financial Protection Bureau (CFPB) regulates consumer financial products through Regulation E which includes payroll card accounts. Regulation E already addresses investigations into reported problems with payroll card accounts. Regulation E requires a consumer to notify a financial institution of an error or fraudulent activity promptly. Upon notification, the institution has 10-days to complete the investigation, but may be granted a 45-day extension. DOL would require all investigations to be completed within 10-days without an extension available.

“The Changes in Terms & Conditions of Agreement section appears duplicative with federal regulation. Regulation E requires card issuers to provide consumers with a 21-day advanced notice of changes. The DOL proposal would require employers, not card issuers, to provide consumers with 30-day advance notice.

“Also, Periodic Statements & Transaction Histories requirements appear to conflict with federal regulation. Regulation E does not require written periodic statements if the card issuer offers account balance through telephone, 60 days of electronic account history of transactions, written account history of transaction, and if requested by the consumer, the issuer may charge for written statements. The proposed rule by DOL would require written statements, written monthly statements if requested, 12 month written transaction history if requested, and no limit as to how many can be requested per year, all free of charge.

“The CFPB recently proposed changes to Regulation E. As a result, we would urge DOL to delay adoption of its rule proposal until further research can be done as to how Regulation E changes would affect the DOL proposal.

“At present time there does not appear to be sufficient data demonstrating that there are significant problems with New Yorkers using payroll cards. While we believe that companies and employees should have the option to use payroll cards in New York State, we also believe that the proposed rule will be burdensome to the issuing financial institutions. This burden may cause such a problem that financial institutions will stop issuing pay cards, which would result in the opposite effect that the Department is trying to achieve.

“As a result of the aforementioned problems, we recommend the Department to seek advice of the Department of Financial Services and the institutions issuing payroll cards, so that a revised rule can

be adopted that will help both employees and employers without overly burdening the institutions that they rely on.”

By letter dated July 31, 2015, Assembly Members Robinson, chairperson of the Assembly Standing Committee on Banks, Titus, chairperson of the Assembly Standing Committee on Labor, and Zebrowski, chairperson of the Assembly Administrative Regulations Review Commission, together, sent a public comment to respondent, stating in relevant part that:

“We appreciate the complexity of developing regulations on payroll cards, which involves not only laws on payment of wages, but also Federal and state laws and regulations governing financial services. We urge DOL to consult with the Department of Financial Services to ensure that its rules do not duplicate or conflict with banking regulations.”

In a second revised notice of rulemaking published June 15, 2016, respondent again made changes to the proposed regulations based on comments received from the public. Respondent acknowledged that comments had been submitted expressing concern over the rule requiring unlimited free ATM withdrawals. The second revised notice of rulemaking states:

“Comment 1:

“The requirement that employees be provided unlimited withdrawals at least one local ATM machine is burdensome.

“Response 1:

“The Department disagrees. This requirement ensures that employees are able to access their wages in a free and effective way in line with the requirements of Article 6 of the Labor Law.”

The regulations were adopted on September 7, 2016.

PROPOSED LEGISLATION ON PAYROLL DEBIT CARDS

2007 NY Assembly Bill A7701 authorized employers to pay employees through the use of a payroll card. This bill was proposed because under existing law it is unclear whether and to what extent employers may pay employees by debit card. The bill, among other things, provided for payment of wages in full without fees at least once per pay period, that payment by debit card must be voluntary, that the employer or payroll card issuer may not charge certain fees to the employee related to the use of a payroll card, including initiation fees, inactivity fees and fees for the use of customer service, and the issuer may not deduct fees that were not disclosed to the employee. This bill was not enacted into law (*see* 2007 NY Assembly Bill A7701 and memorandum in support).

2011 NY Assembly Bill A6894-A clarified methods for payment of wages and authorized payment of wages by payroll cards. The bill added a new section to Labor Law § 192 governing payment of wages by payroll card. The bill provided, among other things, that employees must be

allowed at least one withdrawal or transfer every pay period up to the entire amount of wages free of charge, fees charged by the payroll card issuer are not deemed deductions from wages that violate Labor Law §§ 191 or 193, and wages paid by debit card must be insured by the Federal Deposit Insurance Corporation. This bill was not enacted into law (*see* 2011 NY Assembly Bill A6894-A and memorandum in support).

2013 NY Assembly Bill A6419-B clarified methods for payment of wages and authorized the payment of wages by use of payroll cards. The bill was proposed in order to make New York's law consistent with other states with respect to payment of wages by payroll card. The bill, among other things, provided that employees must be allowed at least one withdrawal or transfer up to the entire amount of wages, fees charged by the card issuer are not deemed deductions from wages in violation of Labor Law §§ 191 or 193, employees must be provided a means to check their account balance free of charge, and wages paid by debit card must be insured. This bill was not enacted into law. (*see* 2013 Assembly Bill A6419-B and memorandum in support).

2014 NY Senate Bill S7790 authorized and regulated the use of payroll cards. The bill was introduced to clarify and update New York Labor Law on proper use of payroll debit cards and added new sections to the Labor Law on payment of wages by payroll debit card, including numerous proposals made by the Attorney General. The bill included provisions that employees must be provided with at least one network of automatic teller machines that provides withdrawals or balance inquires at no cost, at least two free out of network withdrawals per pay period, and a method for an employee to withdrawal his or her entire weekly wages without a fee. This bill has not been enacted into law (*see* 2014 NY Senate Bill S7790; 2014 NY Assembly Bill A10056; memorandum in support of 2014 NY Assembly Bill A10056).

2015 NY Assembly Bill A3109-A clarified methods for the payment of wages and authorized the payment of wages by use of payroll cards. The bill contained provisions that employees must be able to make at least one withdrawal or transfer in each payroll period without charge up to the full amount of wages for that week and one withdrawal at an in-network automatic teller machine each pay period without charge, a means for checking the card's account balance free of charge irrespective of the number of inquiries made, and prohibits an employer from using a payroll card program that charges fees for such services as point of sale transactions and account maintenance. The bill also required a payroll card program to provide certain notices and protections, and that the wages be insured. This bill was not enacted into law (*see* 2015 NY Assembly Bill A3109-A and memorandum in support).

2015 NY Assembly Bill A5968 authorizes and regulates the use of payroll card accounts. The bill includes provisions that employees paid by payroll debit card must be provided with at least one network of automatic teller machines that provide free cash withdrawals and balance inquiries, and a method for an employee to withdrawal his or her entire net wages each pay period without fees. The bill was not enacted into law (*see* 2015 NY Assembly Bill A5968 and memorandum in support).

2015 NY Assembly Bill A6608 specifies conditions for the payment of wages to employees by direct deposit to a payroll debit card. The bill requires among other things that employees must be provided at least one network of automatic teller machines located in reasonable proximity to the place of employment or residence that provides unlimited cash withdrawals at no cost to the employee, unlimited balance inquiries at no cost to the employee, and at least one reasonably

convenient method in addition to the free automatic teller machines for an employee to withdraw his or her entire wages each pay period without incurring a fee. This bill was not enacted into law (*see* 2015 NY Assembly Bill A6608 and memorandum in support).

2015 NY Assembly Bill A6811, introduced at the request of the Attorney General, authorized and regulated the use of payroll card accounts. The bill was substantially similar to 2015 NY Assembly Bill 5968 and 2014 Senate Bill S7790. The bill was not enacted into law (*see* 2015 NY Assembly Bill A6811 and memorandum in support).

2015 NY Senate Bill S4685-A, also introduced at the request of the Attorney General, authorized and regulated the use of payroll card accounts. The bill, which was substantially similar to 2015 NY Assembly Bills 5968, A6811, and 2014 NY Senate Bill 7790, was not enacted into law (*see* 2015 NY Senate Bill S4685-A and memorandum in support).

ANALYSIS

The Board makes the following findings of fact and law pursuant to Board Rule (12 NYCRR) § 65.39:

Article 6 of the Labor Law governs payment of wages. Labor Law § 191 requires prompt and full payment of wages, Labor Law § 193 prohibits employers from making unlawful deductions from an employee's wages, and Labor Law § 192 provides the manner in which an employer may pay wages to an employee. Labor Law § 199 provides that "[t]he commissioner may issue such rules and regulations as he determines necessary for the purposes of carrying out the provisions of [Article 6]" (*see also* Labor Law § 21 [11] [Commissioner of Labor may issue such regulations governing any provision of the Labor Law as she finds necessary and proper]). The regulations under review relate to methods of payment of wages and require employers to provide access to one or more automatic teller machines that offer withdrawals at no cost to the employee (12 NYCRR 192-2.3 [b] [1]) and prohibit payroll debit card issuers from charging an employee certain fees related to use of a payroll debit card (*id.* § 192-2.3 [c]). We find the regulations are invalid because they exceed respondent's rulemaking authority under Labor Law § 199 by regulating banking services. The regulations go beyond the statutory language of Article 6, specifically that of Labor Law § 192, which governs the relationship between employers and employees, by placing restrictions on financial institutions.

Labor Law § 192 currently does not prohibit payment of wages by payroll debit card with an employee's consent because the statute allows for payment by direct deposit of wages into a bank or other financial institution. A bank or other financial institution includes a payroll debit card to which wages may be legally directly deposited. Prior to adoption of the regulations, respondent recognized that the statute allowed for payment by payroll debit card as long as certain conditions were met. Respondent's most recent opinion letters held that payment of wages by debit card is not prohibited by Labor Law § 191 so long as employees have an effective means by which to make an unlimited number of withdrawals on the card without incurring fees by bank teller or automatic teller machine. Respondent reasoned that "[f]or example, if employees are able to make withdrawals from a bank teller, the employer is not required to ensure any free ATM transactions. However . . . the location at which free withdrawals may be made must be located within a reasonable distance of the employee's worksite," (DOL opinion letter No. RO-09-0158). The

regulations, by prohibiting all fees associated with use of a payroll debit card, depart significantly from the plain language of the statute and respondent's prior position on the subject.

Respondent's prohibitions against fees charged by and other activities of debit payroll card vendors and issuers is not within her purview. In New York, the Department of Financial Services regulates banks and financial institutions and the fees they may charge for banking services (*see generally* Banking Law, art 2), including fees related to checking accounts to which employers may legally direct deposit wages (Banking Law § 14-f; 3 NYCRR 9.3) and licensed check cashers where employees may choose to cash their paychecks (Banking Law § 372). We find the fees associated with use of a payroll debit card are similar to fees associated with checking accounts and licensed check cashers, and, therefore, are not subject to regulation by respondent. Because the statute already allows employers to pay wages by payroll debit card with an employee's consent, the regulations are invalid to the extent they prohibit otherwise lawful conduct by financial institutions for providing banking services. Restrictions or requirements placed on the employer that are consistent with the statute are, of course, valid, but these regulations go beyond regulation of the employment relationship and into the area of banking law, which is outside respondent's competence and expertise in the regulation of employment and occupational safety and health.

Our view that the regulations exceed respondent's authority and are beyond the scope of the statute is supported by the legislature's efforts to amend the statute as well as public comments on the regulations made by members of the legislature as part of the rulemaking process. Several bills proposed in the legislature addressing the issue of payment of wages by payroll debit card have failed to gain sufficient support to be enacted into law (*see e.g.* 2011 NY Assembly Bill A6894-A; 2013 NY Assembly Bill A6419-B; 2014 NY Senate Bill S7790; 2015 NY Assembly Bill A3109-A; 2015 NY Assembly Bill A5968; 2015 NY Assembly Bill A6608; 2015 NY Assembly Bill A6811; 2015 Senate Bill S4685-A). That at least eight bills on identical subject matter as the regulations were introduced during such a short period of time contemporary to the time period during which the regulations were proposed and adopted demonstrates that the issue of payment of wages by payroll debit card is a matter of public concern being debated within the legislature. The legislature's failure to amend the statute demonstrates their satisfaction with the current statutory language or their inability to reach consensus on the manner in which payroll debit cards should be regulated under the Labor Law, if at all. Public comments submitted by members of the legislature to respondent during the rulemaking process both in support of and opposed to the regulations further support that the legislature has not been able to settle this issue. Assembly Members Robinson, Titus, and Zebrowski, respectively the chairs of the assembly banking, labor, and regulations review committees co-signed a public comment urging respondent to consult with the Department of Financial Services to ensure its rules do not duplicate or conflict with banking regulations and offering suggestions for clarifying and improving the proposed regulations. Senators Martins and Murphy, chairs respectively of the senate labor and regulations review committees submitted a joint-comment recommending respondent seek the advice of the Department of Financial Services to revise the regulations. As discussed above, we find that the regulations exceed respondent's rulemaking authority and encroach upon the jurisdiction of banking and financial services regulators.

Although we find the regulations are invalid because they exceed the jurisdiction delegated to respondent by the legislature, we recognize respondent has a well-founded concern that low-wage workers without access to traditional bank accounts will be coerced by their employers to

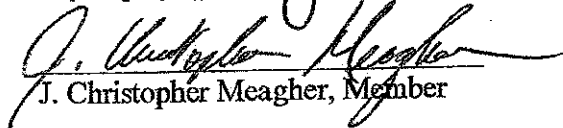
receive their wages by payroll debit card at a significantly lower payroll cost to the employer, and that employees paid by payroll debit card may be subject to excessive or hidden fees when accessing their wages. It is already illegal for an employer to require an employee to receive wages by payroll debit card. Labor Law § 192 requires the advance consent of an employee before an employer may make payment of wages by payroll debit card. With respect to fees that employees must pay when using payroll debit cards to access their wages, it is illegal for an employer to make any direct or indirect charge to an employee to receive his or her wages (Labor Law § 193) and these same employees already face the possibility of paying fees to licensed cash checkers if they choose to use their services to cash their paychecks. The regulations, however, prohibit financial institutions such as petitioner from charging fees for banking services to employees using payroll debit cards. While these fees may be excessive in respondent's view and disproportionately impact the most vulnerable workers in the state, she does not have authority to act in this area.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED THAT:

1. The regulations regarding methods of payment of wages adopted September 7, 2016 to be codified as 12 NYCRR part 192 are revoked; and
2. The petition for review be, and the same hereby is, granted.



Vilda Vera Mayuga, Chairperson



J. Christopher Meagher, Member

Michael A. Arcuri, Member

RECUSED

Molly Doherty, Member



Gloribelle J. Perez, Member

Dated and signed by the Members
of the Industrial Board of Appeals
in New York, New York, on
February 16, 2017.

receive their wages by payroll debit card at a significantly lower payroll cost to the employer, and that employees paid by payroll debit card may be subject to excessive or hidden fees when accessing their wages. It is already illegal for an employer to require an employee to receive wages by payroll debit card. Labor Law § 192 requires the advance consent of an employee before an employer may make payment of wages by payroll debit card. With respect to fees that employees must pay when using payroll debit cards to access their wages, it is illegal for an employer to make any direct or indirect charge to an employee to receive his or her wages (Labor Law § 193) and these same employees already face the possibility of paying fees to licensed cash checkers if they choose to use their services to cash their paychecks. The regulations, however, prohibit financial institutions such as petitioner from charging fees for banking services to employees using payroll debit cards. While these fees may be excessive in respondent's view and disproportionately impact the most vulnerable workers in the state, she does not have authority to act in this area.

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