

General Assembly Steps in to Offer Clarification on Payroll Debit Cards

In late October we [alerted](#) you that the Pennsylvania Superior Court held that paying employees through a mandatory payroll debit card violated the Pennsylvania Wage Payment and Collection Law (WPCL). In *Siciliano v. Mueller*, the Superior Court held that while the use of voluntary payroll debit cards is an appropriate method of wage payment, the use of mandatory payroll debit cards was not. In an amicus brief, the American Payroll Association (APA) argued that the Pennsylvania Legislature made clear, in Section 6121 of the Banking Code, that an employer could satisfy the requirements of the WPCL when "lawful money or a check is not involved by depositing an employee's wages into an account at a financial institution." The APA contended that, by definition, payroll cards involve the deposit of wages into an employee's account at a financial institution and therefore, satisfied the requirements of the WPCL. Nevertheless, the Superior Court found that Section 6121 clearly required the written request of the recipient and thus, did not allow for the use of mandatory payroll debit cards.

The General Assembly has now stepped in to provide clarification on the issue of payroll debit cards. Act 161, an amendment to the Banking Code signed into law by Pennsylvania Governor Tom Wolf on November 4, 2016, expressly permits the payment of wages through a payroll debit, so long as it is optional for employees. The Act establishes requirements and parameters for employers to use debit cards in the payment of employees' wages while providing increased protection for workers.

First, before obtaining the employee's authorization to accept payment through a payroll debit card, the employer must provide notice of all of the employee's wage payment options, the terms and conditions of the payroll card option, a notice that third-parties may assess fees and information on ways for the employee to access wages without being assessed fees.

Additionally, the amendment places a number of restrictions on the card itself. The card must not impose fees for certain transactions, including application in a payroll card program, issuance of the initial card or one replacement card per year, transfer of wages to the payroll account itself or inactivity of the account for a period of less than 12 months. The card must allow one free withdrawal and one free in-network ATM withdrawal each pay period. Further, employees opting to use the payroll debit card must be able to check the balance of the account through a telephone system or other electronic means, free of charge to the employee.

Act 161 makes clear that it supersedes any inconsistent provision in any other statute, rule or regulation. Thus, so long as the payment of wages through a debit card complies with Act 161, it will also comply with the WPCL. The amendment goes into effect on May 4, 2017.

Comment: What does this mean for employers? Employers must ensure that their current payroll system does not utilize mandatory payroll debit cards. Further, employers who choose to offer payment of wages through voluntary payroll debit cards must ensure that their program complies with Act 161. Failure to comply with the aforementioned requirements will violate Pennsylvania law.