
A BILL FOR AN ACT

RELATING TO PAYMENT OF WAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the intent of
2 chapter 388, Hawaii Revised Statutes (chapter 388), is to
3 protect the payment of workers' wages and other compensation,
4 encourage employers to pay wages promptly, and reduce workers'
5 economic losses. Chapter 388 only addresses payment methods of
6 cash or check convertible to cash but does not specify payment
7 methods through direct deposits or pay cards.

8 The legislature further finds that the department of labor
9 and industrial relations has long recognized the voluntary use
10 of direct deposits as a method that satisfies the payment of
11 wages. According to the Hawaii Bankers Association,
12 approximately eighty-five per cent of all employees in Hawaii
13 are paid by direct deposit.

14 The legislature additionally finds that there is an
15 increasing number of employers who pay their employees through
16 the use of a payroll card or pay card. According to the Hawaii
17 Bankers Association, approximately fourteen thousand employees
18 receive their wages through this method of payment. Pay cards



1 serve two groups of employees, the unbanked (employees without a
2 bank account) and under-banked (employees with a bank account
3 that is not used by the employee). A pay card allows unbanked
4 or under-banked employees to receive wages without having to
5 cash their paper paychecks at a check cash establishment and pay
6 a service charge.

7 However, the legislature also finds that numerous concerns
8 have been raised throughout the nation over the use of pay
9 cards. To address these concerns, certain consumer protections
10 are needed for the use of pay cards in Hawaii. These
11 protections will ensure that employers retain the option to pay
12 their employees by pay card or direct deposit and will also
13 ensure that employees are able to authorize, after full
14 disclosure, the payment of their wages through pay cards and are
15 fully informed about the use of a pay card, such as options for
16 receiving wages; information about pay card fees; and what free
17 services the pay card provides, including the ability to access
18 the employee's funds from the pay card.

19 The purpose of this Act is to modernize chapter 388 to:

- 20 (1) Authorize employers to pay wages to an employee using
- 21 a pay card if certain requirements are met;

1 (2) Reflect direct deposit as a current practice in the
2 payment of wages under certain conditions; and

3 (3) Hold an employer responsible for any fees incurred if
4 an employer has insufficient funds in the employer's
5 bank account for an electronic transfer of the
6 employee's wages.

7 SECTION 2. Chapter 388, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 **"§388- Payment of wages by pay cards. (a)**

11 Notwithstanding section 388-2, an employer shall not pay wages
12 due to the employer's employees by use of a pay card unless the
13 following requirements are satisfied:

14 (1) The employee shall be given the option of receiving
15 the employee's wages by direct deposit to a depository
16 account of the employee's choosing or receiving
17 payment by paper check and the option of receiving
18 payment by pay card before the employee selects either
19 direct deposit or paper check;

20 (2) The employer shall not mandate an employee's use of a
21 pay card;



- 1 (3) The employer shall not make participation in the pay
2 card program a condition of hire or continued
3 employment;
- 4 (4) The employee shall voluntarily authorize in writing or
5 via electronic signature, without intimidation,
6 coercion, or fear of discharge or reprisal for refusal
7 to accept the pay card or pay card account, the
8 payment of wages using a pay card;
- 9 (5) Prior to obtaining the employee's consent, the
10 employer shall provide the employee:
 - 11 (A) A description, stated in plain language in at
12 least ten-point font, of the employee's options
13 for receiving wages;
 - 14 (B) The pay card fee schedule in a form, written in
15 plain language in at least ten-point font, that
16 the employee may retain for the employee's
17 records. The pay card fee schedule shall state
18 the dollar amount of all fees;
 - 19 (C) Written notice, in plain language in at least
20 ten-point font, that states whether third parties
21 may assess additional fees relating to the use of
22 the pay card; and

- 1 (D) A list of the services available to the employee
- 2 pursuant to paragraph (8);
- 3 (6) The employer shall select an issuer that offers
- 4 employees a process for disputing pay card account
- 5 fees that have been assessed in a manner inconsistent
- 6 with the pay card fee schedule;
- 7 (7) The employer shall agree to honor a written request by
- 8 the employee to change the method of receiving wages
- 9 from a pay card to another method offered by the
- 10 employer within two pay periods from the time of the
- 11 request;
- 12 (8) The pay card shall provide for all of the following,
- 13 at no cost to the employee:
- 14 (A) A pay card on which the employee may receive
- 15 wages, with no charges for the application,
- 16 initiation, transfer, loading, privilege of
- 17 participation, or distribution or delivery of the
- 18 initial pay card;
- 19 (B) The ability during each pay period for the
- 20 employee to make at least three free withdrawals
- 21 from the pay card, one of which permits
- 22 withdrawal of the full amount of the balance on

1 the card at a federally insured depository
2 institution or at that institution's affiliated
3 automated teller machines;

4 (C) The means to access balance or other account
5 information online or via other automated system
6 offered in conjunction with the pay card in a
7 manner that allows access to account information
8 twenty-four hours a day, seven days a week
9 without charging a fee; and

10 (D) The ability to close a pay card account and
11 obtain payment of the balance remaining on the
12 card;

13 (9) The pay card shall not impose fees based on an
14 employee's account balance;

15 (10) The employer shall ensure that the pay card account
16 provides one free replacement pay card per year at no
17 cost to the employee at least fifteen days before the
18 pay card's expiration date; provided that the
19 replacement pay card need not be issued if the pay
20 card has been inactive for a period of not less than
21 twelve months or the employee is no longer employed by
22 the employer;



1 (11) Pooled pay card accounts shall be permitted; provided
2 that each subaccount shall be for the sole and
3 exclusive benefit of the named employee, and not
4 subject to the claims of the employer's creditors;
5 provided further that each employee's pay card account
6 shall be eligible for deposit insurance on a pass
7 through basis, including:
8 (A) The account records of the depository institution
9 shall disclose the existence of the agency or
10 custodial relationship;
11 (B) The records of the insured depository
12 institution, custodian, or other party shall
13 disclose the identities of the employee
14 cardholders who actually own the deposits and the
15 amounts owned by each employee cardholder; and
16 (C) The funds in the account shall be owned by the
17 individual employee cardholders under an
18 agreement among the parties or pursuant to
19 applicable law and shall not be used by the
20 employer's creditor; and
21 (12) The funds in the pay card account shall not expire.
22 The pay card account may be closed after six



1 continuous months of inactivity, with reasonable
2 notice to the employee; provided that the remaining
3 funds in the pay card account shall be refunded to the
4 employee at no cost to the employee.

5 (b) An employer shall deposit all wages owed to an
6 employee, who has elected in writing or via electronic signature
7 to receive the employee's wages through a pay card, into the
8 employee's pay card account on or before the employee's
9 designated payday. The employee shall be deemed to have been
10 paid wages owed at the time the wages are deposited into the
11 employee's pay card account and the employee has access to those
12 wages. If there is any delay of an employee's access to wages
13 due to an error by the issuer, the employer shall not be held
14 liable for this delay; provided that the employer deposited the
15 proper amount of wages into the account on or before the
16 designated payday and the employer is in compliance with
17 subsection (a).

18 (c) An employer shall be liable for any wages due and not
19 timely paid onto a pay card or other elected method of payment
20 pursuant to subsection (b).

21 (d) The employer shall provide twenty-one days prior
22 written notice to any change to the pay card program taking



1 effect. The written notice shall be in plain language in at
2 least ten-point font of any change to any of the terms and
3 conditions of the pay card account, including any changes in the
4 itemized list of fees.

5 (e) The employer shall comply with all applicable
6 recordkeeping requirements under this chapter and section 387-6.

7 (f) The employer's obligation under this section shall
8 cease sixty days after the employer-employee relationship ends
9 and the employee has been paid the employee's final wages."

10 SECTION 3. Section 388-1, Hawaii Revised Statutes, is
11 amended by adding five new definitions to be appropriately
12 inserted and to read as follows:

13 "Electronic transfer" means any transfer of funds, other
14 than transactions originated by check, draft, or similar paper
15 instrument, which is initiated through an electronic terminal or
16 computer so as to order, instruct, or authorize a depository
17 institution to debit or credit an account. "Electronic
18 transfer" includes but is not limited to point-of-sale
19 transfers, automated teller machines, transactions, direct
20 deposits or withdrawals of funds, and transfers initiated by a
21 telephone conversation.



1 "Issuer" means the pay card issuer authorized to accept
2 deposits and whose deposits are federally insured, and includes
3 a person acting as a direct or indirect agent or administrator
4 of an issuer.

5 "Pay card" means a prepaid debit card distributed to an
6 employee by an employer, or by another entity by arrangement
7 with the employer, through which the employer provides the
8 employee access to the employee's wages and is:

- 9 (1) Issued by a depository institution authorized to
10 accept deposits and whose deposits are federally
11 insured; and
- 12 (2) Used by an employee to access wages from a pay card
13 account and is redeemable at multiple unaffiliated
14 merchants or service providers or automated teller
15 machines.

16 "Pay card account" means an account that is directly or
17 indirectly established by an employer and to which transfers of
18 the employee's wages are made.

19 "Pay card fee schedule" means a written list of fees that
20 may be charged to an employee by an issuer in connection with a
21 pay card account or an explanation of how the fees will be
22 determined."



1 SECTION 4. Section 388-2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§388-2 Semimonthly payday[-]; method of payment of wages.**

4 (a) Every employer shall pay all wages due to the employer's
5 employees at least twice during each calendar month, on regular
6 paydays designated in advance by the employer, in lawful money
7 of the United States [~~or~~], with checks convertible into cash on
8 demand at full face value thereof[+], by direct deposit to the
9 employee's account at a financial institution as provided in
10 subsection (d), or by other means as provided in section 388- ;
11 provided that when a majority of an employer's employees or a
12 majority of the employees in a collective bargaining unit
13 recognized by an employer or established by law elect, in a
14 secret ballot election under procedures approved by the director
15 of labor and industrial relations, to be paid once a month on a
16 regularly scheduled basis, the employees shall be paid on such
17 monthly basis. The elections shall not be held more frequently
18 than once in every two years and each election shall be valid
19 for a period of two years.

20 (b) The earned wages of all employees shall be due and
21 payable within seven days after the end of each pay period.

1 (c) The director may, upon application showing good and
2 sufficient reasons, permit an employer to:

3 (1) Establish regular paydays less frequently than
4 semimonthly; provided that the employee shall be paid
5 in full at least once each calendar month on a
6 regularly established schedule; or

7 (2) Pay earned wages within fifteen days after the end of
8 each pay period.

9 (d) An employer may pay wages due to the employer's
10 employees by direct deposit to the employee's account at a
11 financial institution; provided that:

12 (1) The employee has voluntarily authorized, in writing,
13 the direct deposit to the account and financial
14 institution of the employee's choice;

15 (2) The deposits and accounts of the financial institution
16 selected are insured by the Federal Deposit Insurance
17 Corporation or any other comparable federal or state
18 agency;

19 (3) The employee may cancel the direct deposit at any time
20 with reasonable notice;

21 (4) The employer shall provide a pay statement as required
22 under section 388-7(4);



1 (5) No employee shall be required to pay any costs or fees
2 for the direct deposit of wages into the employee's
3 account; and

4 (6) No employee may be disciplined or otherwise penalized
5 for authorizing or refusing to authorize the direct
6 deposit of wages."

7 SECTION 5. Section 388-5.5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "~~§~~**388-5.5**~~]~~ **Payment of wages by check~~[-]~~ or electronic**
10 **transfer.** Whenever an employee receives the employee's wages
11 from the employee's employer in the form of a check or
12 electronic transfer for which insufficient amounts are available
13 in the bank account of the employer, the employer shall be
14 liable for any bank's special handling fee which the employee
15 may incur by reason of negotiating the check~~[-]~~ or the
16 electronic transfer."

17 SECTION 6. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 7. This Act shall take effect on July 1, 2112;
20 provided that:

21 (1) Section 2 shall take effect with the payroll period
22 beginning on September 1, 2014; and



1 (2) Sections 4 and 5 shall take effect upon approval.



Report Title:

Pay Cards; Direct Deposit; Electronic Transfer; Methods of Wage Payment

Description:

Requires employers to meet certain requirements before paying wages to an employee using a pay card. Clarifies that employers may pay wages by direct deposit under certain conditions. Makes employers responsible for any fees incurred if an employer has insufficient funds in the employer's bank account for the electronic transfer. Effective 07/01/2112; provided that the provisions applicable to pay cards shall take effect with the pay roll period beginning 09/01/2014 and the provisions applicable to direct deposit and electronic transfers shall take effect upon approval. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

