



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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January 24, 2014

To: The Honorable Mark M. Nakashima, Chair,
Kyle T. Yamashita, Vice Chair
and Members of the House Committee on Labor & Public Employment

Date: January 24, 2014
Time: 8:30 a.m.
Place: Conference Room 309, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 1814 Relating to Payment of Wages

I. OVERVIEW OF PROPOSED LEGISLATION

HB1814 proposes to amend Chapter 388, Hawaii Revised Statutes (HRS), to clarify that wages may be paid through electronic transfer by direct deposit into the employee's personal bank account, and prohibits the use of debit cards or similar payment methods.

The department supports this proposal that will modernize Hawaii's Wage and Hour Law and help protect workers' hard earned pay.

II. CURRENT LAW

HRS currently explicitly only addresses payment methods of cash or checks convertible to cash. The law does not explicitly address payment of wages through direct deposits or pay cards. The Division has interpreted the law to allow these types of wage payments as long as the employee volunteers to participate.

III. COMMENTS ON THE HOUSE BILL

Although not stated, the department has long recognized direct deposits as satisfying the required method for wage payments. The employee can choose the bank in which to hold his or her account and the money is the employee's money to write as many checks as they wish to pay bills or other expenses, and withdraw as much or as little as he or she chooses. This amendment will make clear such arrangements for direct deposit are permitted within reasonable accommodations.

In light of this legislation to clarify the law, the State is reconsidering its current policy.

**Testimony to the House Committee on Labor and Public Employment
Friday, January 24, 2014 at 8:30 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 1814 RELATING TO PAYMENT OF WAGES

Chair Nakashima, Vice Chair Yamashita, and Members of the Committee:

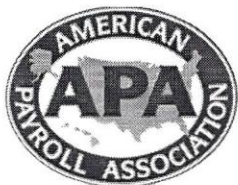
The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 1814 Relating to Payment of Wages.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber has concerns that the bill prevents employers from requiring direct deposit. In this digital age this is a cost and time saving factor. Second, we are unsure as to the requirements of mandating what financial institutions an employee must choose per subsection (d)2. Third, subsection (d)3 is ambiguous on the notice an employee must give an employer. Finally, we are concerned about the prohibition of payment of wages to an employee's debit card or other means.

As the digital age moves forward the law must allow flexibility in the use of technology which provides benefits for employers and employees.

We ask that this bill be held. Thank you for this opportunity to express our views.



American Payroll Association

Government Relations • Washington, DC

January 23, 2014

Re: Written Testimony in Opposition to H.B. 1814

Submitted By: American Payroll Association
Cathy Beyda, Chair, Paycard Subcommittee, Government Affairs Task Force
Bill Dunn, Director Government Relations
Committee: Labor & Public Employment
Hearing Date and Time: January 24, 2014, 8:30 a.m.
Measure Number: H.B. 1814

Dear Representative Rhoads and Committee Members,

The American Payroll Association¹ submits this letter to express our opposition to and deep concern over House Bill 1814 (H.B. 1814) which would prohibit the payment of wages using “a pay card, debit card, automated teller machine card, or similar means of an electronic payment card...”

We suspect that H.B. 1814 was introduced with the intent to protect workers and to ensure that they receive their full wages each pay period. The APA commends Representative Rhoads’ interest in best practices associated with paying Hawaii’s workers. We are concerned, however, that banning payroll cards would hurt the very workers the bill is designed to protect. Indeed, any payroll card program that denies employees access to their full wages already violates Hawaii law.

As you know, Hawaii’s wage payment statutes require the payment of full wages on designated paydays. Haw. Rev. Stat. §§ 388-2, 388-7. Moreover, the Division of Labor and Industrial Relations has posted guidelines on its website addressing payment of wages using direct deposit and payroll cards. Banning payroll cards because some employers fail to comply with

¹ The APA is a nonprofit professional association representing more than 20,000 payroll professionals and their companies in the United States. The APA’s primary mission is to educate its members and the payroll industry regarding best practices associated with paying America’s workers while complying with applicable federal, state, and local laws. In addition, the APA’s Government Affairs Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

1601 18th Street, NW, Suite 1, Washington, DC 20009 • Phone 202-232-6889 • Fax 210-630-4385

the wage and hour laws or follow administrative guidelines is not the answer.² It is akin to banning prescription medicine because some people abuse painkillers, or banning loans because some lenders violate usury laws.

Many well respected policymakers, consumer advocates and government regulators agree that payroll cards can be a very beneficial option for underserved workers who often are forced to rely on expensive alternative financial services, such as check cashers, to access their wages. Earlier this month, Javier Palomarez, President and CEO of the United States Hispanic Chamber of Commerce, published an Op-Ed emphasizing that “Payroll cards offer those with no banking access a dependable option for protecting their finances. Empowering our citizens with this much needed access, security, and convenience of prepaid payroll cards allows the unbanked to save more of what they earn and helps them build a solid financial foundation.”³ A copy of the Op-Ed is attached for your convenience.

The importance of maintaining payroll cards as a permissible method of wage payment in Hawaii is further illustrated by the following account provided by one of our members. The member’s employer processed payroll at company headquarters in San Antonio, Texas and, at times, had difficulty delivering paychecks to employees in Hawaii. She explained:

When 9/11 happened and no planes were flying from the mainland or between the islands, payroll checks/advices printed on the mainland had no way to get to employees on pay day. Pay cards offer the ability to provide timely pay as part of the company’s disaster recovery plan. Funding can occur from the mainland to the cards that are already on the island(s) for employees. Pay cards are also a good method of processing corrections due to late payroll adjustments so that employees can receive and access their funds, in full, asap. We also utilized payroll cards as part of our disaster recovery plan when tsunamis and similar weather conditions approached. Taking this option away would deny employers a viable method for ensuring that their employees receive wages in a timely manner, no matter what.

The APA supports legislative initiatives that provide employers with clear guidance on their responsibilities under state law, ensure that employees have full and free access to their wages on payday⁴ and require training on how to use a payroll card to one’s advantage. In this regard, the APA recently joined forces with the National Consumer Law Center to develop sensible guidelines for implementing beneficial payroll card programs. In a press release announcing the guidelines, our organizations explained:

Though we represent different constituencies (low income consumers and payroll administrators), we agree that payroll cards can offer unbanked workers with an economical, safe and convenient way to receive their wages. For these workers,

² As one commenter recently noted, “if a manager violates payroll laws, then that doesn’t mean that we need to regulate payroll cards, it means that we need to enforce payroll laws. If prepaid cards end up being regulated out of existence, then the regulations will likely hurt the people they are trying to help.” Ben Jackson, *What Does Raymond Chandler Have to Teach Us About Prepaid Regulations?* (August 19, 2013).

³ For another excellent discussion of payroll cards from an organization committed to protecting low wage earners, see Benjamin Mangan, *Stop Blacklisting Payroll Cards for Worker*, <http://www.linkedin.com/today/post/article/20130710205603-132220-stop-blackballing-payroll-cards-for-workers>.

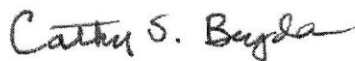
⁴ Most payroll card programs provide employees with multiple ways to access their full wages each pay period without cost. We would be happy to describe these to you.

payroll cards can mean no check cashing fees, greater security without the risks of cash, access to pay despite natural disasters and the ability to make purchases over the internet and by telephone.”

The press release (attached) goes on to identify eight guidelines that, if followed, “can result in a payroll card program that is mutually beneficial for both workers and employers.” These guidelines emphasize full and free access to wages, employee choice, the use of payroll cards that are widely accepted (e.g., branded payroll cards), training and transparency of terms, free access to account information and deposit insurance. They also caution against unsafe overdraft protection programs and the provision of employer incentives that are detrimental to employees.

We would welcome the opportunity discuss the above issues with you, as well as to suggest possible amendments to the bill. In this regard, please feel free to contact Cathy Beyda (650-320-1824) or Bill Dunn (202-232-6889) with any questions or concerns that you may have.

Sincerely,



Cathy Beyda, Esq.
American Payroll Association
Chair, Paycard Subcommittee, Government Affairs Task Force



William Dunn, CPP
American Payroll Association
Director of Government Relations

cc:

Rep. Mark M. Nakashima
Rep. Kyle T. Yamashita
Rep. Henry J.C. Aquino
Rep. Sharon E. Har
Rep. Linda Ichiyama
Rep. Gregg Takayama
Rep. Kaniela Ing
Rep. Roy M. Takumi
Rep. Ryan I. Yamane
Rep. Aaron Ling Johanson



January 23, 2014

HUFF POST LATIN VOICES

Payroll Cards: A Valuable Option for Those in Financial Need

Posted: 01/08/2014 11:40 am

Like 18 people like this. Be the first of your friends.

Common sense tells us that if you want a well-built home, you must build on a solid foundation. The same holds true for building a strong financial future. It begins with establishing a solid foundation, such as having a checking and savings account. Still, this can be an overwhelming challenge for many Americans, who do not have access to a traditional banking relationship, or even the most basic financial services.

According to a 2011 Federal Deposit Insurance Corporation (FDIC) study on underserved households, almost 30 percent of U.S. households do not have a basic savings account. The study also found that Hispanic households represent the second highest number of unbanked households at 20.1 percent, falling just behind African-Americans at 21.4 percent. These numbers are alarmingly high and illustrate the need for greater financial empowerment and inclusion to help more Americans control their financial futures.

Most workers with established credit and banking services receive their wages via direct deposit, so that their wages are credited to their bank account. For workers without bank accounts, however, this is not an option. For these individuals, payroll cards can play an important role because they provide some of the same benefits and protections that traditional banking relationships offer, while bringing them into the formal financial system.

Unbanked workers benefit greatly from electronic wage payment programs that deliver their wages directly to a prepaid payroll card, providing them with instant, secure, and convenient access to their money. While payroll cards offer discretionary services that may incur fees, workers are guaranteed at least one free withdrawal of wages, in full, per pay period. At a minimum, unbanked workers can treat their payroll card like a paycheck on payday and cash it to the penny without paying a fee.

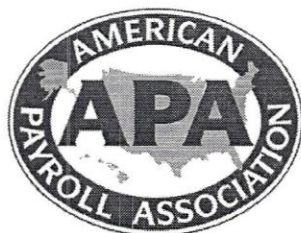
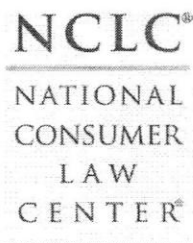
Payroll cards also offer consumers important security protections since the cards are issued by a financial institution and are subject to strict federal and state consumer protection laws. In addition, payroll cards eliminate the need for carrying large amounts of cash that can be lost or stolen.

But payroll cards are more than just a plastic paycheck - they give workers access to things many of us take for granted. Payroll cards can be used to order things online, book hotel rooms, and even pay bills. Payroll cards aren't just a more convenient and safer way for workers to access their wages, they enable unbanked workers and their families to participate in the economy, in ways they haven't been able to before.

Payroll cards offer those with no banking access a dependable option for protecting their finances. Empowering our citizens with this much needed access, security, and convenience of prepaid payroll cards allows the unbanked to save more of what they earn and helps them build a solid financial foundation. And, as more of our citizens gain that solid financial footing, we can ultimately get our economy healthy again.

Javier Palomarez is President & CEO of the United States Hispanic Chamber of Commerce.

Follow Javier Palomarez on Twitter: www.twitter.com/USHCC



FOR IMMEDIATE RELEASE: July 31, 2013

Contacts:

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American Payroll Association, National Consumer Law Center Agree Payroll Cards Make Sense for Unbanked If Proper Guidelines Followed

WASHINGTON, DC—Recent media stories have criticized the fees on payroll cards, a form of prepaid debit card offered by employers to pay wages. Though we represent different constituencies (low income consumers and payroll administrators), we agree that payroll cards can offer unbanked workers an economical, safe and convenient way to receive their wages. For these workers, payroll cards can mean no check cashing fees, greater security without the risks of cash, access to pay despite natural disasters and the ability to make purchases over the internet and by telephone.

But not all cards are created equal. Following the right guidelines can result in a payroll card program that is mutually beneficial for both workers and employers.

1. ***Employees must be able to access their full wages in cash at least once each pay period without fees.*** Free and clear access is required by the state wage and hour laws and is critical to the success of any payroll card program. Common methods of cash access include bank teller transactions, ATM withdrawals, convenience checks and cash back from point of sale purchases.
2. ***Employees must have a choice of wage payment method and be able to change it.*** Under federal law, employees may not be required to receive their wages on a payroll card and must have the choice of another payment method, typically direct deposit to an account of the employee's choosing. State wage and hour laws may also require a choice of a paper paycheck option. Employees should know how to change their selection if they want to do so.
3. ***Employers should offer a payroll card that is widely accepted.*** The logo of a widely accepted payment brand (i.e., Visa, MasterCard or Discover) signals to employees that they can take their card to any bank that is a member of the payment brand and receive their full wages from the teller each pay period without fees. In addition, branded payroll cards can be used to make purchases and pay bills in person, online and over the telephone. A wide, convenient surcharge-free ATM network linked to the payroll card is also important to help employees avoid third party ATM surcharge fees.
4. ***Employers must provide clear information and training on use of the payroll card and possible fees.*** Training can ensure that employees understand the key terms and know how to access their wages without fees. Pricing for discretionary services should be reasonable and easily understandable.

5. ***Employees must be provided free and convenient access to account information.*** Employees need free access to account information to check their balance, spot unauthorized charges, monitor fees and manage their finances. They should not be charged a fee for responsible behavior, such as checking their balance using an automated telephone system. Additional free means of accessing account information, like automated text messages and smart phone applications, are becoming more common.
6. ***The funds in the payroll card account must have deposit insurance.*** Employee wages must be protected if the bank holding the funds becomes insolvent. Employers should select a program that maintains payroll funds in an FDIC- or NCUA-insured account on a pass-through basis to the individual cardholder.
7. ***Be wary of overdraft protection.*** Payroll cards are often promoted as a budgeting tool for low income workers. Employees usually can spend only those funds deposited onto the card. To prevent confusion and ensure that the program truly promotes financial responsibility, employers should consider selecting programs that do not offer overdraft protection or other embedded credit features. Such features can be unsafe for employees if used unwisely and can result in a cycle of debt. This principle does not prohibit a program from covering an occasional inadvertent overdraft transaction if there is no charge to the employee.
8. ***Be wary of employer incentives.*** Some payroll card programs pay cash incentives to the employer. Those funds might be better spent improving the card program for employees.

We believe that well-designed payroll card programs can live up to their promise, benefitting both employees and employers.

Written by William Dunn, CPP, Director of Government Relations for the American Payroll Association and Lauren Saunders, Managing Attorney for the National Consumer Law Center.

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NCLC: Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. www.nclc.org

APA: Established in 1982, the **American Payroll Association** (APA) is the nation's leader in payroll education, publications, and training. The nonprofit association conducts nearly 500 payroll training conferences and seminars across the country each year and publishes a complete library of resource texts and newsletters. Every year, nearly 37,000 professionals attend APA training sessions. Representing more than 20,000 members, APA is the industry's highly respected and collective voice in Washington, D.C. Visit APA online at www.americanpayroll.org.

Presentation To
House Committee on Labor & Public Employment
January 24, 2014 at 8:30 AM
State Capitol Conference Room 309

Testimony in Opposition to Bill H. B. 1814

TO: The Honorable Mark M. Nakashima, Chair
The Honorable Kyle T. Yamashita, Vice Chair
Members of the Committee

My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eleven FDIC insured depository institutions operating in the State of Hawaii.

The Hawaii Bankers Association is opposed to a provision in HB 1814 that would prohibit the payment of wages by use of a payroll card, debit card, or similar electronic payment card. The use of “general purpose” payroll cards, those bearing the MasterCard or Visa logo, is a growing practice in many parts of the country. These products are especially suited for a large base of consumers who do not have bank accounts, or do not have easy, inexpensive access to check cashing services. Or, some of them just prefer to have their wages deposited into a payment card that can be used in millions of locations worldwide. For them, the convenience of wages loaded periodically and automatically onto a payment card is appreciated and often requested.

The banks in Hawaii are not today issuing payroll cards but there are payroll processors serving local companies that may be doing so, utilizing the services of mainland banks equipped to handle the processing. Electronic banking will continue to evolve and emerge in the years to come, with new payment devices installed in mobile phones, wrist watches, and the like. Prohibiting this practice in Hawaii while the rest of the nation and the world embrace the next generations of electronic payment convenience seems counterproductive.

We would recommend deleting Section 1 (e) from this measure. If there is concern that certain employers may be issuing “private label” payroll cards that cannot be accepted at a wide range of merchant locations, the bill could be amended to require the issuance of the widely accepted general purpose credit cards.

Thank you for the opportunity to submit this testimony and please let us know if we can provide further information.

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