



## **Payroll Card Backlash: Employers Should Consider Risks Carefully**

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Over the last several years, employers have increasingly adopted the practice of paying employees through payroll debit cards. The driving force behind this trend appears to be the lower costs associated with such debit cards as opposed to the cost of issuing paper checks. As a result, this payroll practice has nearly doubled since 2010.

On the surface, the system is fairly straightforward. Employers issue the cards to employees and deposit their wages on the card each period. The card can then be used like a debit card: the employee can make purchases with it or withdraw money from an ATM.

However, there is a growing backlash against this practice, with resistance coming from employees and government regulators alike. Therefore, employers must carefully consider the risks of adopting such a practice in the future.

The chief complaint from opponents is that the debit cards contain hidden fees that eat into wages. Anyone who has ever withdrawn money from an ATM owned by a bank other than the person's "home" bank is familiar with the fee that usually accompanies such withdrawal. Now, the manner in which this fee affects wages is becoming a contested legal issue.

The primary concern about this payroll practice under federal law is whether the fees associated with the debit card result in the employee being paid less than the federal minimum wage. Under the federal Fair Labor Standards Act, non-exempt employees must receive at least the federal minimum wage for all hours worked.

Employers that are designing or updated existing payroll policies should exercise caution when it comes to including payroll/debit card programs. Before making any such decision, employers should first ensure that their program complies with applicable state and federal laws. Increased litigation and regulation related to this practice seems inevitable as the practice becomes more popular. Accordingly, employers should consult with their employment counsel to stay abreast of changes in this area.

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