Insights, News & Events

IS EARNED WAGE ACCESS THE WAY OF THE FUTURE? 5 TIPS FOR EMPLOYERS SEEKING TO ATTRACT AND RETAIN TALENT THROUGH ON-DEMAND PAY

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To combat a tight job market and a seemingly shrinking workforce, employers are looking for creative ways to retain and attract talent. An Earned Wage Access policy – a revolutionary employee benefit program that offers employees almost instant access to their pay – might just be what gives companies the edge. Indeed, companies using these benefit programs experienced 19% lower turnover rates. Of those companies that have already added earned wage access to their compensation packages, 89% of employees reported feeling more motivated and productive at work when they had access to their wages before payday and 74% reported having fewer unplanned absences. But with many states rife with onerous employment laws, what do employers need to know about earned wage access to implement a program successfully?

Earned Wage Access (EWA): What Is it?

Earned wage access or early wage access is an innovative method of delivering wages. Traditionally, payroll is run most often on a bi-weekly or monthly basis. But now, employers – by linking up with EWA providers – can offer employees immediate access to earned wages for hours already worked. Rather than waiting for their bi-weekly pay day, an employee can access earned wages within hours of performing work.

This program differs from the practice of payday lending. With EWA programs, the key is that employees have already performed the work for which they are being paid. This program simply allows them to receive their earned

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compensation ahead of their traditional pay day. The benefit is administered through an EWA provider that typically offers wage access to employees through many means including direct deposit, automated clearing house (ACH) transfer, or a payroll debit card (i.e., pay card).

From 2018 to 2020, EWA providers processed nearly $15 billion in early payroll transactions. We expect that these numbers will continue to increase and the options and manner in which wages can be paid and accessed on-demand will continue to evolve as financial technology companies continue to grow this space. In this Insight, we will provide a general overview of EWA programs and five critical issues employers should evaluate to successfully implement an earned wage access program. Stay tuned for further insights regarding EWA and the use of pay cards, how EWA may work for employees seeking compensation in cryptocurrency, and more.

5 Tips to Help Employers Successfully Implement an EWA Benefit Program

EWA is becoming increasingly popular as an attractive employee benefit. This may come as no surprise considering that there are 56 million Millennial and 65 million Gen Z employees in the current workforce. The debate about whether EWA actually benefits employees is already fierce, but what is clear is that many employees want and may soon come to expect this benefit as a part of their employment package. Indeed, more than 78% of Americans live paycheck to paycheck, resulting in increased pressure to come up with plans to make ends meet between paydays. This pressure is likely to feel amplified with gas prices and inflation skyrocketing.

If you operate a business that employs lower wage earners or younger generations who want their money without delay, you may consider adding EWA. However, depending in which state you operate, there are several things you should consider. This article addresses five primary tips for employers – but this list is non-exhaustive and your organization should consult with your wage and hour counsel before making the leap.

Tip #1: Ensure any EWA employee benefit program complies with state and federal wage and hour laws.

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Because EWA programs are a somewhat new employee benefit offering, compliance with existing workplace laws is of the utmost importance. Particularly, employers must be careful to comply with state specific laws, including but not limited to those related to:

- **Wage deductions.** In states that prohibit or limit wage deductions, employers should ensure that employees receive their full wages and are provided a free option for taking advantage of the EWA benefit. Many states strictly limit deductions from earned wages to specific amounts and circumstances defined by statute. The general rule is that deductions cannot be made unless specified by statutes (e.g., for payments such as taxes, medical insurance premiums etc.) or with express written authorization (for limited purpose). Employers should review the EWA program to ensure that wages can be obtained without incurring fees and keep a close eye on state law.

- **Accurate payment of wages**. Employers must ensure that the any EWA benefit program properly processes and pays wages on a timely basis. Data management is extremely important, as hours worked and wages earned must be properly and accurately recorded and transmitted to the EWA provider. It is important to ensure that the EWA in turn transmits wages to the employees.

- **Wage Assignments.** At this point, there is no law or guidance specifically addressing wage assignment in the context of EWA. However, it is important to note that there are some state-specific laws that govern wage assignments. For example, California restricts the amount and manner of wage assignments while New York regulates agreements directing employers to divert an employee's "future earnings" to a third party. Other states have other special legal requirements which may need to be observed.

- **No payday loans**. Employees should only be provided access to wages that have already been earned. More than a dozen states prohibit payday loans and others regulate the practice. EWA is an alternative to these practices, so adherence to that model is critical for success. Certain other companies provide similar services directly to the public without employer integration. These direct-to-consumer advance services are not the same as employer-integrated EWA.

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Tip #2: Manage and address data privacy.

Personal employee data is governed by a minefield of laws and regulations. Employers should take precautions when sharing any employee data and information.

Tip #3: Take note of benefits implications and withholdings.

Payment of benefits using EWA and/or paycards is an issue that must be carefully addressed. For example, traditional and existing employee benefits plans as well as payroll and deduction issues may arise. Be prepared to address issues such as insurance premiums, 401(k) contributions, taxes, garnishments, etc.

Tip #4: Pay attention to state and federal laws governing paycards.

The use of paycards for wage payment is fairly regulated by the federal government and most states. If an EWA program offers wage access through paycards, be sure to consult and craft a program that complies with the federal and applicable state laws.

Tip #5: Ensure the EWA provider is experienced in the area and pay attention to contract language.

The choice of an EWA vendor is very important. Some providers work with large, national employers and have large balance sheets to facilitate these programs, and others are newcomers to the market with fewer capabilities. Look closely at leading vendors' portfolio of clients, experience in your industry, and financial capabilities based on the size of your organization.

When evaluating an EWA provider, it is important to clearly identify responsibilities within contracts between employers and EWA providers as a regulatory framework may develop for these programs. Employers should make sure that they understand how wages are paid and how the EWA program works. It is also important to pay attention to issues such as indemnification provisions.

Conclusion

EWA employee benefit programs may give companies the edge to attract and retain talent and may also soon become expected by the younger generations within the workforce.

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Compliance and lawful written policies and implementation will be a key to success. Stay tuned for additional insights discussing the likely evolution of this practice including how EWA programs can be rolled out along with pay cards and the controlling regulations as well as how we expect EWA to interplay with cryptocurrency. To ensure you stay up to speed, make sure to subscribe to receive Fisher Phillips Insights directly to your inbox.

In the meantime, if you are interested in learning more, have any questions about EWA or want to add it to your employee benefits package, be sure to contact the authors of this insight, your Fisher Phillips attorney, or any attorney in our Wage and Hour Practice Group.

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