

Quick Analysis of Industrial Board Decision to Strike NY Payroll Card Rule

February 17, 2017

Dear NBPCA Members,

Yesterday, the State of New York Industrial Board of Appeals (the “Industrial Board”) issued a [Resolution of Decision](#) in the *Matter of the Petition of Global Cash Card, Inc.* (Docket No. PR 16-120). The key holding of the Industrial Board decision reads as follows: “[t]he regulations regarding methods of payment of wages adopted **September 7, 2016 to be codified as 12 NYCRR part 192 are revoked**”(emphasis added). In brief, the Industrial Board’s decision strikes down the New York Department of Labor’s (“NY DOL”) final rule on the methods and payment of wages (the “**Final Rule**”) that was issued on September 7, 2016 and was scheduled to go into effect on March 7, 2017. As a reminder, a copy of the Final Rule can be found on page 8 of the September 7th edition of the [New York State Register](#).

It is important to keep in mind that the Industrial Board’s decision is subject to appeal by the NY DOL if an appeal is commenced within sixty days after the decision is issued (around April 16, 2017). At this early stage, it is not clear what action the NY DOL will take in response to today’s decision.

In its findings of fact and law, the Industrial Board addressed several concerns which were raised by the NBPCA and other industry stakeholder’s during the rulemaking process, including the following:

- “Labor Law §192 currently does not prohibit payment of wages by payroll debit card with an employee’s consent because the statute allows for payment by direct deposit of wages into a bank or other financial institution.”
- “Respondent’s (NY DOL) prohibitions against fees charged by and other activities of debit payroll card vendors and issuers is not within her purview. In New York, the Department of Financial Services regulates banks and financial institutions and the fees they may charge for banking services, including fees related to checking accounts to which employers may legally direct deposit wages. . . .”

- “We find the regulations are invalid because they exceed respondent’s rulemaking authority under Labor Law §199 by regulating banking services. The regulations go beyond the statutory language of Article 6, specifically that of Labor Law §192, which governs the relationship between employers and employees, by placing restrictions on financial institutions.”
- After analyzing the relevant statutes and all of the NY DOL opinion letters on the subject, the Industrial Board concluded “the regulations, by prohibiting all fees associated with a payroll debit card, depart significantly from the plain language of the statute and respondent’s prior position on the subject.”

The Industrial Board’s decision also included the following critical observations about payroll cards:

- “Although we find the regulations are invalid because they exceed the jurisdiction delegated to respondent by the legislature, we recognize respondent has a well-founded concern that low-wage workers without access to traditional bank accounts will be coerced by their employers to receive their wages by payroll debit card at a significantly lower payroll cost to the employer, and that employees paid by payroll debit card may be subject to excessive or hidden fees when accessing their wages.”

The NBPCA would like use this opportunity to thank Global Cash Card for their leadership and advocacy on behalf of the entire Payroll Card industry. Their bold efforts have helped to preserve an extremely beneficial and consumer friendly product that serves as a lifeline for many New York workers. The NBPCA would like to also thank the members of the Payroll Card Working Group for their active participation, expertise, and feedback which resulted in the NBPCA submitting four separate comment letters to the NY DOL on the following dates: (a) [July 31, 2015](#); (b) [November 25, 2015](#); (c) [July 15, 2016](#); (d) [February 10, 2017](#).

If you have any questions about the proposed the Industrial Board’s decision please feel free to contact [Eli Rosenberg](#), [Brian Tate](#) or [Brad Fauss](#).

Sincerely,
The NBPCA Staff