

NY Worker's Compensation Board Issues Revised Payroll Card Proposal

6/07/2017

Dear NBPCA Members:

The NBPCA has learned that the New York State Workers' Compensation Board ("Workers' Compensation Board") has released a revised proposed rule ("[Revised Proposal](#)," see **section 380-5.6 Methods of payment of paid family leave benefits.**) rule on Paid Family Leave. Similar to their initial proposal (the "[Proposed Rule](#)," see **page 23**) to regulate Paid Family Leave that was released on February 22, 2017, the Revised Proposal includes language to regulate debit cards. The debit card provisions in the Proposed Rule are similar in some respects to the New York Department of Labor's ("NY DOL") treatment of payroll debit cards under the final rule on the methods and payment of wages ("[NY DOL Final Rule](#)").

An initial review of the Revised Proposal from the Workers' Compensation Board reveals that the agency made some changes in the method of payments section that differ from their original proposal, including some changes that were requested by the industry. In brief, the Revised Proposal requires insurance carriers and self-insured employers to provide employees with a written notice containing the following information if the carrier or employer uses a method of payment other than a check:

- A plain language description of all of the employee's options for receiving payment of benefits;
- A statement that the carrier or self-insured employer may give the employee the choice between receiving benefits by debit card or direct deposit, but cannot prohibit the employee, upon the employee's certification that it is necessary, from receiving benefits by check;
- A statement that the employee may not be charged any fees for services that are necessary for the employee to access his or her benefits in full; and
- If offering employees the option of receiving payment via debit card, a list of locations where employees can access and withdraw wages at no charge to the employees within reasonable proximity to their place of residence or place of work.

You may recall that the NBPCA's April 8, 2017 [comment letter](#) urges the Workers' Compensation Board to revise its Proposed Rule to remove the contemplated

requirements for debit cards because such requirements are impractical and are likely to harm employees by causing debit card providers and carriers to stop offering these products in New York. In addition, our comment letter makes the Workers' Compensation Board aware of the fact that the New York Industrial Board of Appeals (the "Industrial Board") struck down the NY DOL's Final Rule on [Feb. 16, 2017](#), nine days after the Feb. 7 deadline for the Workers' Compensation Board to submit the Proposed Rule to the New York State Register in order for it to appear in the Feb. 22 publication. Lastly, we highlighted the fact that the Industrial Board determined that the NY DOL exceeded its authority by imposing requirements outside of its area of competence and expertise by attempting to regulate banking services.

The NBPCA will continue to analyze the Revised Proposal and has scheduled a Payroll Card Working Group conference call to review and discuss the contents of the Revised Proposal, collect NBPCA member comments and feedback, and begin composing our response to the Workers Compensation Board, which is due on **June 23, 2017**. All NBPCA members are welcome to attend this conference call, which will be held on **Thursday, June 8, 2017 at Noon (ET)**. If you are not a member of the Payroll Card Working Group and you would like to participate in the Payroll Card Working Group conference call, please send an email to: gr@nbpca.org. In the interim, if you have any questions regarding the Revised Proposal, please do not hesitate to contact [Eli Rosenberg](#), [Brian Tate](#).

Sincerely,

The NBPCA Staff