

archive

This article recently appeared in *Chain Store Age*, October 1, 2005.

Payroll Debit Update: The law plays catch-up with technology

by Cathy S. Beyda

Over the past couple of years, attorneys at Littler Mendelson have received an increasing number of inquiries regarding the use of debit cards as a means of compensating employees. Despite the advantages of payment by debit card, in the past their use has been rendered inadvisable due to outdated wage-payment statutes enacted prior to the development of modern technologies. Specifically, until recently the legality of using such payroll debit cards was unclear-while most state wage-payment statutes do not prohibit the use of payroll debit cards, they do not permit the use of the cards, either.

Payroll debit cards allow employers to pay wages to participating employees using a reloadable, prepaid card issued by a bank or other vendor. The use of payroll debit cards offer benefits to both employers and employees alike. For example, the cards allow employees who are unable to open a bank account (often referred to as "unbankable" employees) to enjoy the convenience of electronic wage payment for the first time.

For employers, the benefits of payroll debit cards are primarily financial and administrative. For large

employers, the cost of issuing and distributing paper paychecks can be enormous. Accordingly, many payroll-card vendors emphasize that offering employees the option of receiving their wages by debit card may result in significant savings to the employer, as well as increased employee morale. Moreover, employees who travel and work at remote locations can enjoy convenient access to their funds.

This year, Maryland, Michigan, Minnesota and North Dakota have enacted legislation regarding payroll debit cards. These states join Nevada and Virginia in specifically allowing employers, through legislation or regulation, to compensate employees using payroll debit cards provided employee participation is voluntary and specified conditions are met. Legislation in other states, including Kansas and New York, failed this year. Nevertheless, most states have either published enforcement positions regarding the use of payroll debit cards or have stated their positions informally. While some states still refuse to acknowledge payroll debit cards as a valid form of wage payment, others have responded quickly to public interest in this area, and the law regarding authorized instruments of

wage payment is slowly but surely catching up with available technologies. Indeed, we believe that in most states and employer may legally implement a wage-payment program that provides employees the option of receiving their wages on a payroll debit card.