



Proposed New York State Department of Labor Regulations Deemed Invalid and Revoked

On February 16, 2017, the New York State Industrial Board of Appeals (“IBA”) (an independent review agency that assesses the reasonableness and validity of certain rules, regulations or ordered issued by the Department of Labor) revoked proposed regulations that had been adopted by the Commissioner of Labor. The regulations, scheduled to take effect on March 7, 2017, would have prohibited banking institutions from charging certain fees to employees who attempted to access wages paid to them by their employer through payroll debit cards. The IBA’s decision stems from a petition brought by Global Cash Card Inc., a payroll debit card vendor, who argued that the proposed regulations exceeded the Commissioner’s authority.

In a lengthy Resolution of Decision, the IBA determined that the proposed regulations infringed upon the authority of the New York State Department of Financial Services, the agency responsible for regulation of banks and financial institutions and the fees they may charge for banking services. Specifically, the IBA determined that “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,” and that codification of the regulations would exceed the Department of Labor’s rulemaking authority under Labor Law § 199.

If enacted, the regulations would have established specific notice and consent requirements on employers before the employer could pay wages via direct deposit and payroll debit card, but New York law already requires that an employee give their consent before wages can be paid in that manner. As such, the IBA’s decision to revoke the proposed regulations does not diminish employee protections in any significant fashion.

The Department of Labor has sixty days to appeal the IBA’s decision to the New York State Supreme Court. Employers are urged to comply with the current regulations and to follow any developments regarding a potential appeal.

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If you have any questions about this alert, please contact Partner [Justin Vogel](#) at 516.393.2570 or jvogel@garfunkelwild.com.