



# American Payroll Association

Government Relations • Washington, DC

April 27, 2010

## STATEMENT IN SUPPORT OF HOUSE BILL 5821

### ***Introduction***

House Bill 5821 would allow employers in Michigan to pay their employees using purely electronic means. Employers electing this option would be required to provide their employees with a written form asking them to choose payment by direct deposit or on a payroll card. Most employees will continue to be paid by direct deposit. Only those who elect payment using a payroll card or fail to return the election form will be paid using a payroll card. *H.B. 5821 would not allow employers to mandate the use of payroll cards.*

If enacted, Michigan would join a growing majority of states that allow employers to offer their employees a choice between electronic payment methods without also offering a paper paycheck option. The American Payroll Association (APA) strongly supports H.B. 5821 and commends Representative Scripps for his efforts to update Michigan's wage payment statute in light of modern payment technologies and practices.

The APA is a nonprofit professional association representing more than 21,000 payroll professionals and their companies in the United States and Canada. The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, the APA's Government Affairs Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

### ***The benefits of electronic wage payment are undeniable***

Electronic wage payment saves employers money. Direct deposit and payroll cards eliminate the cost of issuing, processing and distributing paper paychecks, as well as the costs associated with lost and stolen paychecks. Although these savings can be substantial, they represent only one of the reasons why employers prefer electronic wage payment methods. Direct deposit and payroll cards also provide employers with a reliable means of complying with strict wage payment statutes even when unforeseen obstacles arise. For example, inclement weather, unexpected employment terminations, natural disasters and similar contingencies often make the timely payment of wages using paper paychecks difficult if not impossible.

In addition, many employers implement electronic wage payment as a benefit to employees who are unable to participate in direct deposit. Paper paychecks are extremely costly and inconvenient for employees who do not have bank accounts or have limited access to traditional financial services. These employees often are forced to carry around large amounts of cash. The risks of loss and theft are great, and there is no recourse when any of these events occur. In contrast, unbanked and underbanked employees who are issued a branded payroll card (i.e., one bearing the Visa, MasterCard or Discover logo) can walk into any bank or credit union that

issues that brand of card and receive their full wages from the teller free of charge. Employees also are provided with unlimited point of sale transactions and can obtain cash back from these transactions often without a fee.

Convenience to employees and prompt access to wages translate into increased morale and a more productive workplace as employees spend less time during the working day handling personal finances (e.g., going offsite to cash checks, standing in check cashing lines, etc.). Electronic pay also eliminates the need for employees to come to work on their day off to pick up their paycheck. Finally, electronic wage payment is an attractive option for employers who are looking to become more environmentally conscious.<sup>1</sup>

### ***The growing trend among the states is to permit purely electronic wage payment***

*The laws and/or administrative enforcement positions in more than half the states allow employers to use electronic wage payment methods as the exclusive means of compensating all or some of their employees.*<sup>2</sup> The growing acceptance of electronic payment methods is further reflected in the fact that over half of the states now use prepaid debit cards (like payroll cards) for the delivery of government benefits. Michigan itself disburses unemployment benefits by giving recipients the choice between direct deposit and payment on a prepaid debit card. Michigan also delivers child support and food stamps electronically.

### ***Payroll cards are subject to significant consumer protections***

Unlike other prepaid products, payroll cards already are subject to significant regulation. Only payroll cards have been singled out by the Federal Reserve Board as being subject to Regulation E, which includes many important consumer protections. For example, if a payroll card is used fraudulently, the cardholder is only liable for up to \$50 in fraud losses.<sup>3</sup> Regulation E also requires dispute resolution procedures to protect cardholders, and requires that all terms, conditions and fees be clearly disclosed, permitting payroll cardholders to easily understand how to use the card to their best advantage. Although overdrafts on payroll cards are uncommon, recent revisions to Regulation E prohibit fees for overdrafts without prior consent.

Michigan's Department of Labor and Economic Growth also has adopted regulations governing the use of payroll cards. See Mich. Admin. Code R. 408.9035. Under the regulations, employees paid using a payroll card must be able to obtain their wages in full on payday. Prior to the issuance of a card, the employer must provide the employee with written notice of the terms and conditions of the card, any fees that may be assessed by the card issuer, and notice that other fees may be assessed by third parties (e.g., out of network ATM providers).

The regulations also make clear that the employee, not the card issuer or bank, owns the funds underlying the payroll card and that neither the issuer nor the bank may have a revisionary interest in the funds. Finally, the regulations provide that if an employer deposits wages into a pooled account accessible to employees using a payroll debit card, the employer must maintain records of the amount and date of each deposit for each employee. In addition, the

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<sup>1</sup> According to the Electronic Payments Organization, paper checks use over 674 million gallons of fuel and add 3.6 million tons of carbon dioxide to the environment each year. See, <http://www.electronicpayments.org/financial/fi.direct-deposit.benefits.php>.

<sup>2</sup> The laws and/or administrative enforcement positions in the following states expressly permit, or can be interpreted as permitting, purely electronic wage payment: Alabama, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maine, Missouri, Mississippi, Nebraska, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington and Wisconsin. In addition, employers may mandate the choice of between direct deposit and payroll cards for some, but not all employees, in Florida, Iowa, Michigan and Virginia.

<sup>3</sup> Many payroll card issuers also have zero-loss policies that protect cardholders from any losses.

cardholder's ownership interest in the funds deposited must be indicated on records maintained by the card issuer, the depository institution or a third party. These requirements ensure that the employee's funds are covered by FDIC insurance.<sup>4</sup>

***Conclusion***

The APA appreciates the opportunity to voice its firm support for H.B. 5821. Please feel free to contact Bill Dunn (202-232-6889), Cathy Beyda (408-205-7165) or Pete Isberg (610-827-1591) with any questions.

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<sup>4</sup> See, General Counsel Opinion Number 8 (GC8), 73 Fed. Reg. No. 220, p. 67156 (November 13, 2008).

## **Partial List of APA Members with a Presence in Michigan**

7-Eleven

BASIC

Bunzl Distribution Mid Central, Inc.

Bunzl Processor Distribution, LLC

Dick's Sporting Goods, Inc.

HCR ManorCare

Herman Miller, Inc.

Koniag Development Corporation

Omni Hotels

Optimum Solutions, Inc.

PCR

Phillips - Van Heusen Corporation.

SAF-Holland

Sephora

Starbucks Coffee Company

The GEO Group

XMCO, Inc.