

Michigan Now Allows Employers to Mandate Direct Deposit or Payroll Debit Cards

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For years, Michigan employers hoping to do away with traditional paper paychecks have asked whether they could require employees to receive their pay via direct deposit or payroll debit cards and for years, the answer was "no." That changed on December 21, 2010, when the State of Michigan adopted modifications to the Payment of Wages and Fringe Benefits Act. Now, although employers still may not mandate direct deposit for all employees, they can require their employees to accept either direct deposit or to receive their pay on a payroll debit card if certain notices and protections are provided.

In order to mandate direct deposit or a payroll debit card, employers must provide employees with all of the following:

- A written election notice that allows the employee the option of receiving wages through direct deposit or a payroll debit card;
- A statement indicating that, except for employees who are currently receiving pay via direct deposit or a payroll debit card, employees who fail to return the election notice within 30 days along with the necessary account information will be presumed to consent to receive pay via a payroll debit card (note: for employees already paid by direct deposit, their method of payment may not be changed without their written consent);
- Written disclosure of all the following concerning a payroll debit card:
 - The terms and conditions of use, including itemization of all fees;
 - The method(s) of accessing funds without charge;
 - A statement that if the debit card is used outside of a specified ATM network, both the card issuer and the ATM operator may impose fees;
 - The methods by which the employee can obtain free balance inquiries;
 - The employee's right to change the method of receiving wages; and
 - A statement that the payroll debit card does not provide access to savings or checking accounts.

Employers who pay by payroll debit card must ensure that the card has all of the following features:

- Employees can make at least 1 withdrawal or transfer without charge each pay period, but not more frequently than once a week, for any amount the employee elects up to the balance available on the card;

- Allows no changes in fees or terms of service unless the employee is provided with at least 21 days' written notice;
- Allows employees to make an unlimited number of balance inquiries—either electronically or by phone—without charge; and
- Is not linked to any other form of credit, including a loan against future pay or a cash advances against future pay.

Employees may not be required to pay any fees or costs incurred by the employer in establishing direct deposit or payroll debit cards.

Finally, the new law allows employees at any time to request a change between direct deposit or a payroll debit card. The employer may take no longer than 1 pay period to implement the change after receiving the employee's request and the necessary information. Any election to receive pay via direct deposit or a payroll debit card must be made freely, without intimidation, coercion or fear of discharge or other reprisal.

As noted above, Michigan employers still cannot mandate direct deposit for all employees, but the new law moves us closer to that system. As before, Michigan employers can encourage employees to accept pay via direct deposit or a payroll debit card by paying employees who do on a different schedule (e.g., weekly or bi-weekly) than employees who opt for another form of payment (e.g., monthly). Because employee payroll laws vary from state to state, employers with operations in multiple states must be sure to comply with the laws of the particular state in which it is doing business.

Should you have any questions about these recent changes to the Michigan wage payment act or how to implement them, or should you have questions about any other labor or employment-related matter, please contact any member of Warner Norcross & Judd LLP's Labor & Employment Practice Group.