

## Earned Wage Access Checklist for Employers

**Earned Wage Access (EWA)**, also known as **On Demand Pay**, is an employee benefit that allows employees to almost immediately access wages for work already performed but not yet paid in advance of their traditional pay day. Typically, an employer contracts with a third-party EWA provider whereby employees can access their earned wages in advance of pay day through an app. Recent studies show that 60% of workers want access to on demand pay – across all age groups, income levels, and education levels, and employers who offer this benefit report it has enhanced recruitment and retention efforts.<sup>1</sup>

Developing and implementing an on demand pay benefit program raises numerous legal compliance issues that you should be mindful of when developing and implementing an EWA benefit program:

### 1. Ensure the EWA Program Complies with Federal and State Wage and Hour Laws

For each state where you have employees, partner with legal counsel to consider:

- Are there any specific laws or regulations concerning EWA programs?
- What are the rules on deductions? If fees are charged to the employee, is this permissible under state law?
- Does the EWA program involve an assignment of wages? If so, is the wage assignment permissible under state law?
- What checks and balances are in place to ensure the accurate payment of wages?
- Must employees provide consent prior to participation in the benefit program?
- Must employees provide consent prior to receiving on demand pay through direct deposit?
- How and when should employment taxes be withheld, deposited and reported?
- How and when should deductions for fringe benefits be calculated and withheld?
- Will any fees charge create a minimum wage or overtime issue under federal or state law?

### 2. Draft a Written Policy Outlining the Terms of the Benefit Program

- Consult with legal counsel to develop a written policy covering the terms of the benefit program including:
  - How often employees may access wages in advance of pay day each pay period?
  - What percentage of earned wages can be accessed in advance of pay day each pay period?

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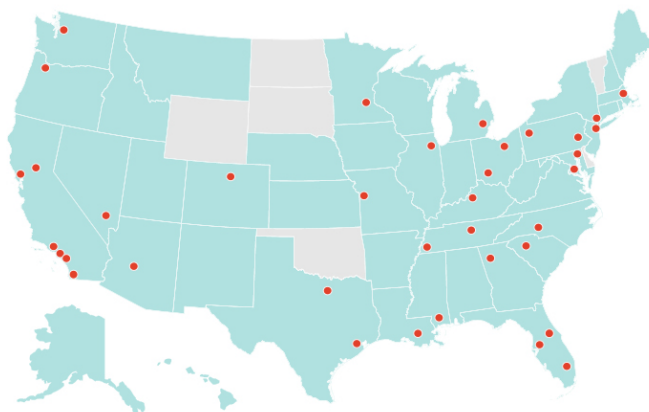
<sup>1</sup> [https://www.adp.com/-/media/adp/resourcehub/pdf/adp\\_ewa\\_study\\_whitepaper.pdf](https://www.adp.com/-/media/adp/resourcehub/pdf/adp_ewa_study_whitepaper.pdf).

- What fees (if any) will be assessed against the employee?
- Other details of the EWA program.
- Ensure employees are provided with proper notice of the benefit program, and any other notice that federal or state law may require in connection with payment of wages (for example, federal and state law may impose notice requirements for payment of wages through a payroll debit card).
- Review your policy and benefit program periodically for legal compliance.

### 3. Partner With a Reputable EWA Provider

- Make sure company understands how early wages are paid and how the third-party EWA provider’s program works before engaging their services (using this checklist to ensure legal compliance issues are addressed).
- Review EWA provider’s portfolio of clients, experience in industry, and financial capabilities to ensure they are reputable and would be a good fit for your organization
- Have legal counsel review the contract before entering into a relationship with an EWA provider.
- Pay attention to contractual provisions related to indemnification and what happens if there is a payroll error.

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