

ALERTS**Labor & Employment Law Alert - CFPB Warns
Against Mandating Use Of Payroll Cards**

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The Consumer Financial Protection Bureau (CFPB), which is responsible for enforcing the Electronic Fund Transfer Act (EFTA) and related Regulation E, recently issued a Bulletin 2013-10 explicitly prohibiting the mandatory use of payroll card accounts at an employer-selected financial institution and otherwise discussing the requirements for such use. Of note is the fact that the EFTA and Regulation E specifically preempt any state laws relating to EFTs, unless the state law affords more protection to the consumer. Further, the CFPB has clarified that these regulations apply to both employers and large depository institutions engaged in providing or utilizing payroll card accounts.

Significant guidance within the bulletin includes the CFPB's ban against employer mandates that employees receive wages only on a payroll card of the employer's choosing, and the agency's position that employers must offer wage payments by some other means. Subject to state law requirements, the CFPB approves mandatory direct deposit at a financial institution of the employee's choosing, or, alternatively, allowing the employee to choose among wage deposits at an institution designated by the employer, or a check or cash payment. In the event of payroll card use, the bulletin also outlines some important consumer protections with which employers and financial institutions must comply, including:

- **Disclosures** - Regulation E affords payroll card holders the right to receive initial disclosures (at account opening or before the first transfer occurs, unless state law provides for earlier disclosure) of any fees imposed by the financial institution for electronic funds transfers ("EFTs") or for the right to make such transfers, as well as various other disclosures, including liability limitations and the types of EFTs that can be made with the payroll card. Each of these disclosures must be "clear and readily understandable, in writing, and in a form the consumer may keep."
- **Access to Account History** - The payroll card issuer must provide periodic statements as required by Regulation E, or, alternatively, must provide the consumer access to his/her account balance by telephone; an electronic history (such as through the Internet) of account transactions for at least 60 days preceding the electronic account access; and, upon either oral or written request by the consumer, a written history of account transactions for at least 60 days preceding the request. The account transaction history provided electronically or upon request must comply with the requirements for periodic statements under Regulation E, including transaction information; and the amount of any fees imposed during the 60 day period for EFTs, the right to make EFTs, or account maintenance.

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- **Limited Liability for Unauthorized Transfers** - Regulation E's limited liability protections apply to payroll cards, with limited exceptions pertaining to the period in which unauthorized transfers must be reported.
- **Error Resolution Rights** - Financial institutions must respond to the consumer's reported errors regarding his/her payroll card account, provided that the report is received within 60 days of the earlier of the consumer's accessing the account history or receiving a written account history reflecting the error, or within 120 days after the alleged error occurs.

As the regulating entity for the EFTA and Regulation E, as well as the Consumer Financial Protection Act, the CFPB's guidance proves valuable to employers and financial institutions alike who seek to (or already) use payroll card accounts in their business operations.

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