



Chief Counsel Robert Robinson
455 Golden Gate Ave., 9th FL
San Francisco, CA 94102

December 31, 2007

**Request for a Letter of Opinion
Payroll Debit Card Program**

Dear Chief Counsel Robinson,

This letter and attached documents are a follow up to a recent conversation with your department, requesting your opinion and review of our payroll card program. I am also including a recent reply from another state regarding our program for review.

As requested I am including the following language from your website for your review. There is no California decision or prior DLSE opinion on point and that subject matter has been actively researched on the DLSE website, including the DLSE Enforcement Policies and Interpretations Manual found on the website. This opinion is not sought in connection with anticipated or pending private litigation concerning the issue addressed in this request. This opinion is not sought in connection with an investigation or litigation between a client or firm and the Division of Labor.

- We believe that our payroll debit card program meets all of the Payroll Debit Card Program requirements in your state, and we would like to get your opinion if we comply.
- If you do not believe that our payroll debit card program meets your requirements, could you please share with us why this is the case.

We (American EPAY Inc.), National City and VISA™ International have invested Millions of dollars to build a highly comprehensive and user-friendly solution which will be very beneficial to non-banked employees receiving funds on a payroll debit card.

This new program enables employees to save hundreds of dollars spent annually cashing payroll checks at predatory check cashing outlets. Since many of these check cashing locations are in high crime neighborhoods our program will lessen their risk of being victimized. It builds a credit history for the card holder, as well as helps them save hundreds of dollars spent on transferring funds to family and friends abroad.

The best part of this card program is that it is FREE to the card holder and it enables them to received their payroll funds to the penny at any bank or United States Post Office location at no fee!

I'd like to quickly share with you the highlights of our program:

1. Upon receiving their payroll funds on a payroll card, once per payroll period, an employee could walk into:
 - a. Any bank or credit union accepting VISA™, which is essentially any bank, and get their full paycheck to the penny at no cost or fee. Note that this feature is offered once per payroll period.
 - b. Any United States Post Office location and get their full paycheck to the penny at no cost or fee. Note that this feature is offered once per payroll period.



2. An employee could receive cash at more than 40,000 ATM locations nation-wide and pay zero ATM surcharge fees. Here's a small sample list of these "Surcharge Free" ATM locations:
 - a. Retail store ATMs: Walgreens, Target, Albertsons, Costco, Winn-Dixie, Rite Aid...more
 - b. Gas Station ATMs: Sunoco, Hess, Phillips 66, Chevron, Exxon/Mobil...more.
 - c. Bank ATMs: Any bank or credit union supporting the "AllPoint Network".
3. All employees on our card programs have access to a printed payroll stub at their work locations each payday as follows:
 - a. Employee can print their payroll stub at any location featuring an American EPAY Walter™ terminal with integrated pay-stub printing features.
 - b. Employee can print their payroll stub from any work computer with a secure internet connection linked to a printer. The stub can be viewed and printed from secure web access or email.
 - c. In case the employee has no web/email access. He/she can request a payroll stub to be immediately sent to a work site fax via secure fax-back capability.

American EPAY, National City Bank and VISA™ International are committed to offering a total payroll card solution that meets or exceeds your requirements as well as satisfying the needs of the low wage non-banked employees.

I am attaching a two (2) page summary of the American EPAY/National City/VISA™ Payroll Debit card solution for your review.

Please advise us of your opinion relating to this program.

Sincerely,

Carl Morris
Director Payroll Cards
American EPAY Inc.
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FAX 866-438-4074
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American EPAY/National City/VISA™ Payroll Debit card Program

American EPAY offers a comprehensive set of solutions around its payroll card program:

1. A PIN (Personal Identification Number) based payroll debit card accepted at any ATM or Merchant's Point of Sale (POS) system that supports the VISA™ Interlink™ Pin-based network. In simple terms, the employee must enter a
2. 4-digit PIN (which they select) to use this card.

This PIN card is offered to the employee free of charge. It enables them to get their full paycheck once every pay period at ANY US Post Office location.



Employee walks to a USPS location, requests a money order equaling his/her full payroll check. USPS clerk issues a money order "to the penny" for the requested amount, and charges the employee \$1.05 for amounts ranging from \$0 to \$500, or \$1.50 for \$500.01 to \$1000. This fee is then refunded back to the card by end of day (once per pay period).

The employee could then cash the money order for free at any retail service center or bank; or get immediate cash right at the USPS location where the money order was issued.

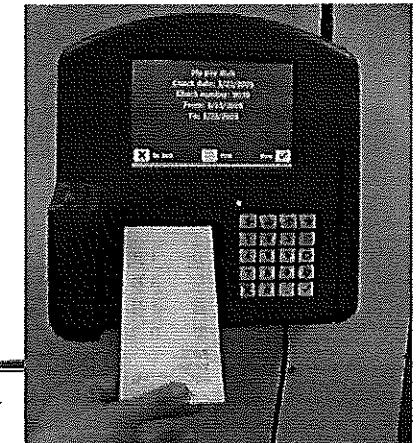
3. A VISA™ Signature card accepted at any Merchant that supports the VISA™ network. Non-banked employees can have this card without any credit checks. It enables them to pay for transactions at restaurants, retail and grocery stores where VISA™ is accepted.

It also gives them access to their full paycheck once every pay period at ANY bank! Employee walks to any bank supporting VISA™ network (any bank), asks for a cash advance of his/her payroll funds against the card. The bank teller gives him/her their full paycheck "to the penny"; all related fees to this transaction are then refunded back to the card (once per pay period).



4. All employees on our card programs have to a printed payroll stub at their work locations on payroll day as follows:

- Employee can print their payroll stub at any location featuring an American EPAY Walter™ terminal with integrated pay-stub printing features.
- Employee can print their payroll stub from any work computer with a secure internet connection linked to a printer. The stub can be viewed and printed from secure web access or email.

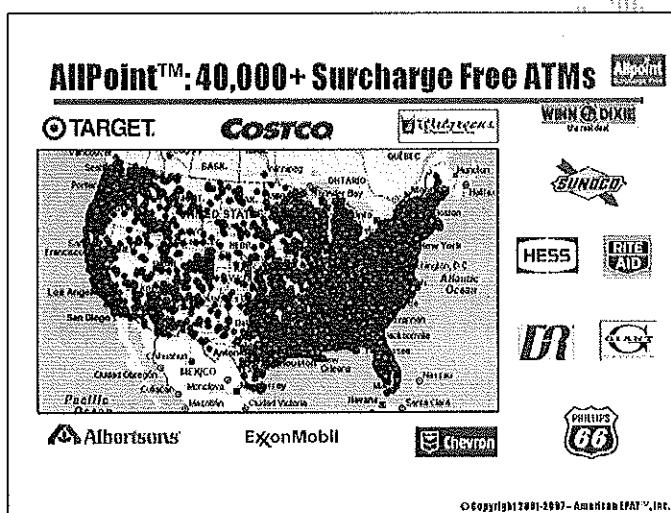




- In case the employee has no web/email access. He/she can request a payroll stub to be immediately sent to a work site fax via secure fax-back capability.

The card also enables employees to pull cash from any ATM supporting the All Point Network at no ATM surcharge fees. An employee could pull cash at more than 40,000 ATM locations nation-wide and pay zero ATM surcharge fees. Here's a small sample list of these "Surcharge Free" ATM locations:

- Retail store ATMs: Walgreens, Target, Albertsons, Costco, Winn-Dixie...more
- Gas Station ATMs: Sunoco, Hess, Rite Aid, Phillips 66, Chevron, Exxon/Mobil...more.
- Bank ATMs: Any bank or credit union supporting the "AllPoint Network"

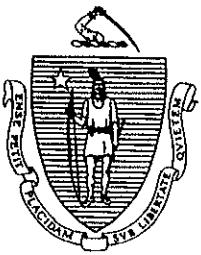


The Employees have 24/7/365 Customer Service via the Web, IVR and Live operators to check balances, answer questions, report lost or stolen cards, etc. Customer Service is currently available in English and Spanish with other languages to be added as necessary.

Upon hiring a new employee, the employer offers payroll via direct deposit into the employee's pre-existing bank account or if they chose onto their American EPAY FDIC insured Instant Issue PIN card (Elite Cash), or VISA™ Signature card, (Lexus Card).

Note that we are planning on introducing additional features (in Quarter3 2008) with the usage of the PIN and Signature cards. The new products will be prioritized by employee feedback, services being reviewed include:

Establishing credit history for non-banked employees (users of the Signature card program)
Bill Payment, Low-Cost Money Transfer, Drug discounts, insurance discounts, tax services and other value-added solutions catered to the non-banked employee.



THE COMMONWEALTH OF MASSACHUSETTS
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Carl Morris
Sales Manager, Payroll Card Solutions
American EPAY Inc.
8420 W. Bryn Mawr Ave. Suite 510
Chicago, IL 60631

December 21, 2007

Re: Payroll Debit Card

Dear Mr. Morris:

Your correspondence seeking a legal opinion regarding your company's Payroll Debit Card Program has been forwarded to me for response. You seek further guidance regarding whether your payroll debit card program meets the requirements of Massachusetts wage laws.

I should begin by noting that the authority of the Attorney General to render formal opinions extends only to state officials, district attorneys, and branches and committees of the Legislature. M.G.L. c. 12, §§3, 6 and 9. Accordingly, the following is strictly by way of information only and should not be construed as a legal opinion of the Attorney General.

Under the Massachusetts Wage Act, employees must be able to obtain their pay without charge and at a location within a reasonable distance from the workplace. M.G.L. c. 149, §148; Treasurer of Worcester v. Department of Labor & Industries, 327 Mass. 237 (1951). The Payment of Wage Law further requires that payment be available to the employee six days after the card is credited her wages. M.G.L. c. 148, §148. According to your description of the program, a non-banked employee may get their full pay check from any bank or credit union accepting VISA or any United States Post Office location at no cost once per payroll period. Such an arrangement would satisfy the Wage Act as it is not substantially different from having one's entire paycheck cashed at no charge by a cashier.

Based on the information this office has received, American EPAY's system appears to be compliant with Massachusetts wage laws. However, it is unclear whether the option to choose direct deposit remains available after an employee initially chooses to participate in the payroll card program. In order to remain in compliance with the law, the payroll card program



must ensure that an employee may revert to direct deposit at a financial institution of their choosing should the employee decide she is no longer interested in participating in the payroll card program.¹

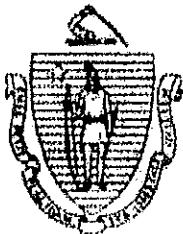
I hope this information is of assistance to you. Thank you for contacting the Attorney General's Office.

Very truly yours,



Marsha Hunter
Assistant Attorney General
Fair Labor Division

¹You may request a legal opinion letter on this issue by contacting the Massachusetts Division of Banks at (617) 956-1500 or write to: Massachusetts Division of Banks, 1 South Station, Boston, MA 02110. For your reference, I attach a copy of an opinion letter provided by the Division of Banks, dated June 30, 2004, regarding the issue of direct deposit. The opinion provides that an employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit.



The Commonwealth of Massachusetts

Office of the Commissioner of Banks

One South Station

Boston, Massachusetts 02110

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AND BUSINESS REGULATION

June 30, 2004

Ms. Stacey Hackler
Rolls-Royce Corporation
P.O. Box 420
Indianapolis, IN 46206-0420

Dear Ms. Hackler:

This letter is written in response to your correspondence of May 7, 2004 to the Division of Banks (the "Division") requesting clarification of certain opinions issued by the Division relative to employer practices with regard to payroll direct deposit.

Your letter requests clarification as to whether any employer may require direct deposit as long as the employees can choose the financial institution that will receive the direct deposit or does such provision extend only to financial institutions, as employers. The Division issued an opinion to a state-chartered savings bank dated March 4, 1997 (Opinion #97-013) stating that the bank, as an employer, may require direct deposit of salary if employees are allowed to choose the institution that will receive the direct deposit. This position is consistent with the applicable provision of Federal Regulation E¹ and the Official Staff Commentary, the 1997 version of which was cited in the Opinion. Federal Regulation E at 12 CFR 205.10(e)(2) provides that "No financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit." In 1997, the pertinent portion of the Commentary stated "A financial institution (as an employer) may not require its employees to receive their salary by direct deposit to that same institution or to any other particular institution. *An employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit.* Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution, or receiving their salary by check or cash." (emphasis supplied.)

The applicable provision, paragraph 10(e)(2), of Federal Regulation E has not been amended since 1997. However, the Official Staff Commentary, pertaining to paragraph 10(e)(2), was amended in 2001 to read as follows: "An employer (including a financial institution) may not require its employees to receive their salary by direct deposit to any particular institution. An employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution (designated by the employer) or receiving their salary by another means, such as by

¹ See 12 CFR 205.10(e)(2).

Stacey Hackler
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check or cash."⁷ This Commentary has not been subsequently amended. The changes in the Commentary reflect, in part, a clarification in the applicability of the section evidenced by the changed language to "An employer (including a financial institution)" amended from the previous language which began "A financial institution (as an employer)...". You will note that the regulation itself states "No financial institution *or other person...*". Accordingly, it is the Division's position that, consistent with Regulation E, the direct deposit provisions apply to financial institutions and other employers. This position is also consistent with the Division's previously issued Opinion 00-148.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,



Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

JAL/cab
PML/legal/2004/06/30/041

⁷ See 66 FR 15192, March 16, 2001.