ALERTS

New York State Industrial Board of Appeals Revokes Payroll Debit Card and Direct Deposit Regulations Set to Take Effect on March 7

February 23, 2017

On Feb. 16, 2017, the New York State Industrial Board of Appeals ("Board") issued a Resolution of Decision[1] invalidating and revoking New York State Department of Labor ("NYSDOL") regulations related to methods of payment of wages that were set to go into effect on March 7, 2017. In its decision, *Global Cash Card, Inc. v. Commissioner of Labor* (Docket No. PR 16-120), the Board reasoned that the regulations exceeded the rulemaking authority of the Commissioner of Labor ("Commissioner") and encroached upon the jurisdiction of banking and financial services regulators.

Background

The relevant regulations, adopted by the Commissioner on Sept. 7, 2016, were to be codified as Part 192 of Title 12 of the New York Code of Rules and Regulations. The regulations would have, among other things: (1) required employers to provide written notice in plain language to employees describing all options for receiving wages and obtain consent from those who elected to receive wages via direct deposit or payroll debit card; (2) required employers to provide access to one or more ATMs that offer withdrawals at no cost to employees; and (3) prohibited employers from charging employees certain fees related to the use of payroll debit cards, including but not limited to fees for receiving wages or holding such cards, point-of-sale transactions, account inactivity,

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maintenance, telephone or online customer service, or closing an account.

Board's Decision

On Oct. 21, 2016, Global Cash Card, Inc. ("GCC"), a national payroll debit card vendor that provides custom payroll debit card programs to New York employers, filed a petition with the Board for review of the regulations, alleging that they exceeded the Commissioner's authority by placing restrictions on financial products and institutions and were thus invalid. The Board agreed with GCC, holding that the regulations were invalid because they exceeded the Commissioner's statutory authority under the New York Labor Law ("Labor Law") by regulating banking services provided by financial institutions. Such regulations, the Board held, fall under the purview of the New York State Department of Financial Services, which governs banks and financial institutions and the fees they may charge for banking services, including those related to checking accounts to which employers may legally deposit wages and licensed check cashers where employees may choose to cash their paychecks.

In its decision, the Board noted that "by prohibiting all fees associated with use of a payroll debit card, the regulations depart significantly from the plain language of [Article 6 of the Labor Law]," specifically Section 192, which provides the manner in which an employer may pay wages to an employee. Because the regulations governed the methods of payment of wages, including requiring employers to provide access to one or more ATMs that offer withdrawals at no cost to employees and prohibiting payroll debit card issuers from charging employees certain fees related to use of such cards, the Board found that the regulations went beyond that necessary to carry out Section 192 and Article 6 of the Labor Law.

The Board also cited prior NYSDOL opinion letters that conflicted with the Commissioner's position and recent legislative efforts concerning payroll debit cards as additional support for the regulations' invalidation and revocation. The Board noted that several bills addressing payment of wages by payroll debit cards have failed to gain sufficient support to be enacted into law, and reasoned that this degree of legislative activity demonstrated that this issue is a matter of public concern being debated by legislators.

We expect the Commissioner to appeal the Board's decision and will keep you updated on any new developments.

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Authored by Donald J. Mosher, Gary Stein, Scott A. Gold, Jessica Sklute and Adam J. Barazani.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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[1] A copy of the decision is available on the Board's website.

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Related People

Donald Mosher

Partner

New York

Scott Gold

Special Counsel

New York

Adam Barazani

Special Counsel

New York

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