

**Consumers Union and National Consumer Law Center
on behalf of its low-income clients**

MODEL STATE PAYROLL CARD LAW

A. Payroll Card Account Law

(1) Definitions

- (a) “Employer” means the employer, and any person or entity acting directly or indirectly on behalf of the employer.
- (b) “Issuer” means the payroll card issuer, and any person acting directly or indirectly on behalf of the payroll card issuer.
- (c) “Payroll card” means an access mechanism, including a prepaid card, code, or device, issued to an employee by an employer, or other entity by arrangement with the employer, through which an employer provides an employee access to his or her wages.
- (d) “Wages” for purposes of this Act includes wages, salary, or other unrestricted monetary compensation.
- (e) “Payroll card account” means an account which holds funds drawn upon by a payroll card.

(2) [Voluntary written consent required] An employer shall not deliver payment of wages by payroll card unless:

- (a) the employer obtains the employee’s written consent to receive wages by payroll card. This consent must be obtained without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the payroll card or payroll card account;
- (b) the employer does not make participation in the payroll card program a condition of hire or of continued employment; and
- (c) the employer also offers the employee the options of:
 - (i) direct deposit to a depository account of the employee’s choosing, and
 - (ii) a paper check.

(3) [Availability of wages without a fee] An employer shall not deliver payment of wages by payroll card unless the contract the employer enters into with the issuer for the provision of the card to its employees requires that the issuer provide employees both:

- (a) at least two ATM withdrawals per pay period at no cost to the employee, available on and after each pay deposit. These ATM withdrawals may be limited to ATMs in a designated network if that network provides reasonably

convenient proximity and access in relation to the employee's place of employment or place of residence; and

- (b) at least one method to withdraw the entire pay for each pay period without the employee incurring a fee.

(4) [Certain types of other fees prohibited] In addition to the fees prohibited under Section (3), an employer may not use a payroll card program to issue wages if the employee may be charged fees by the card issuer, any card sponsor, or the employer for any of the following:

- (a) Application, initiation, loading, participation or other fee to receive wages or to hold the card;
- (b) Point of sale transactions and other ordinary transactions;
- (c) Overdraft, shortage, or low balance status;
- (d) Declined transactions;
- (e) Account inactivity;
- (f) The first three telephone calls to a live customer service representative per pay period;
- (g) Accessing balance or other account information online, by Interactive Voice Response (IVR), through any other automated system offered in conjunction with the card, or at any ATM in the network of the payroll card issuer;
- (h) Written statements or transaction histories;
- (i) Closing an account or issuing payment of the remaining balance by check or other means; or
- (j). Any fee not explicitly identified by type and by amount in the contract between the employer and the payroll card issuer

(5) [No expiration of payroll card funds] The funds on a payroll card shall not expire. The account may be closed for inactivity, with reasonable notice to the cardholder, provided that the remaining funds are refunded to the employee at no cost to the employee.

(6) [Periodic statements and transaction histories] An employer may use a payroll card program to issue wages only if the contract the employer enters into with the issuer for the provision of the card to its employees requires that the issuer provide each of the following with respect to transaction histories and balance information, without a cost to the employee:

- (a) upon the employee's one-time written or oral request, a periodic statement not less frequently than monthly; or if there is a balance but no activity with respect to the card, not less frequently than every three months. The employee may choose to receive this information electronically or on paper.

The transaction history shall include all transactions, including deposits, withdrawals, fees charged or other transactions by any entity from or to the employee's payroll card account;

- (b) upon the employee's written or oral request, a transaction history covering at least the 12 months preceding the request;
- (c) upon the employee's written or oral request, electronic balance notifications on a per-day or per-transaction basis; and
- (d) an annual mailed notice of the right to obtain on request a transaction history, annual statement, or periodic statements. This notice need not be sent to any employee who has signed up for periodic paper or electronic statements or who has accessed his or her electronic transaction history in the previous 12 months.

(7) [Employer disclosures to the employee] An employer who offers a payroll card shall provide the employee with the following information prior to seeking consent to accept wages by payroll card. This information shall be provided in the languages the employer normally uses to communicate employment-related information to the employee:

- (a) a plain language description of the employee's options for receiving wages; and
- (b) the terms and conditions of the payroll card, including a clear, conspicuous and complete itemized list, in a separate form that the employee may keep, of any and all fees that may be deducted from the employee's payroll card account by the payroll card issuer. The dollar amount of each such fee must be stated.
- (c) The information provided to the employee under (a) and (b) must also be made available in a clear and conspicuous manner on the employer's human resources website or on a website maintained by the payroll card issuer with a clear link from the employer's human resources website.

(8) [No link to credit] Payroll card accounts shall not be linked to any form of credit, including a loan against future pay or a cash advance on future pay. This provision does not prohibit a payroll card issuer from covering an occasional inadvertent overdraft transaction if there is no charge to the employee.

(9) [Change of wage payment method] The employer must honor an employee request to change the method of receiving wages from a payroll card to another method that is allowed by law.

(10) [Insure payroll card account funds] An employer may offer a payroll card program only if that program is designed to maintain funds placed in a payroll card program in an FDIC- or NCUA-insured account on a pass-through basis to the individual cardholder.

(11) [Unfair, deceptive or abusive practices] An employer and a payroll card issuer each shall not engage in any unfair, deceptive or abusive practices in connection with offering or providing a payroll card program.

(12) [Severability] The provisions of this act are severable. If any phase, clause, sentence, provision or section is declared to be invalid or preempted in whole or in part by any federal law or regulation, the validity of the remainder of this Act shall not be affected.

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