

Vermont Modifies Position on Paycards

APA, Employer, and State Work for Positive Outcome

BY MARK SMITH

Despite thermometer readings in the single digits and the piles of plowed snow seen on the sides of the state's roadways, the attitude of state government officials in Vermont toward payroll cards has begun to show signs of thawing. Through the efforts of a courageous employer, its paycard provider, and the APA, a comprehensive wage payment program that includes paycards has received the go-ahead from a state that has historically resisted the advance of wage payment technology.

The Vermont Department of Labor has consistently taken the position that employers are not permitted to pay employees with an electronic paycard. In the Frequently Asked Questions section of Vermont's DOL website (www.labor.vermont.gov), the state's stance on paycards is explicit:

Q: *Can an employer pay an employee wages with a debit card?*

A: *No. Vermont law, 21 V.S.A. §343 does not permit wages to be paid via debit card at this time. The statute requires that wages be paid in cash or check, as defined in the Vermont UCC (Uniform Commercial Code). A debit card does not fit the definition of cash or check defined by the UCC.*

The Vermont wage payment statute did not include paycards as an authorized method of payment. This well-publicized position caused many employers to question the viability of paycards not only in Vermont but in other states as well.

AN EXCEPTION TO THE RULE

However, in the winter of 2007, Stage Stores, a nationwide employer, imple-

Mark Smith is Vice President of Client Services at Money Network.



mented a pay distribution service that included paycards. The company had employees in Vermont, several of whom used paycards. One employee contacted the Vermont DOL to question the employer's right to use paycards. The Chief of the Performance and Compliance Unit of the Department of Labor contacted the employer and informed them that they were not in compliance with Vermont law and would not be allowed to use paycards in Vermont.

The employer immediately contacted their paycard provider, Money Network Financial LLC, for guidance. The paycard company's legal counsel contacted Kelly Connelley, Chief of the Performance and Compliance Unit, and explained all the components of the paycard program offered by the employer. The program consisted of both a "convenience check" and a voluntary payroll debit card. The convenience check was

offered at no cost and was also cashable for free at the paycard provider's network of check cashers. Employees could use this convenience check to access all of their pay down to the exact penny, without any fee. Employees were also provided a payroll debit card which they could elect to use on a voluntary basis. The Chief of the Performance and Compliance unit explained that the complaint had not included all of the information about the program, and said she needed a complete written explanation of the program before she could issue a decision on the legality of the pay distribution program.

Money Network's legal counsel provided a detailed written explanation of how the program worked and the options provided to each employee—voluntary direct deposit to the employee's personal bank account, voluntary use of the paycard, or use of the program's patent-pending convenience check.

When the employer learned that the state was reconsidering its initial position, the employer reviewed the operation of its pay distribution system. Most employees were using traditional direct deposit. Other employees were using the paycard program, without trouble and without complaint. Rather than force these employees back onto a company paycheck, the employer elected to continue the program pending the final decision by the state.

The state then had internal meetings involving the UI and Wages Director and the Department of Labor's legal counsel to review the employer's pay distribution program.

RESOLUTION

Concurrently, APA had contacted Vermont on the issue of convenience checks used in combination with pay-

cards. On December 10, 2007, Cathy Beyda, Chair of APA's Government Affairs Task Force Paycard Subcommittee and Senior Counsel of Knowledge Management at Littler Mendelson, received the following e-mail from the Chief of the Performance and Compliance Unit:

"It has been determined that if any electronic pay system allows for workers to receive their wages by means of a 'check' at no cost to the worker, it does meet the intention of §342."

In response to a follow-up question from Beyda, the state said: "We cannot restrict the use of the paycards if the employee chooses to use it as long as they retain the option of the checks and the ability to receive their entire wages one time without fees."

This significant modification of the state's position on the use of paycards highlights how state agencies are willing to work with programs that protect employee access to pay without fees. Vermont stressed that with the use of convenience checks the employer still has the responsibility to ensure that "employees have access to their full wages, and that they are able to access those wages without incurring a fee." Additionally, the Vermont Department of Labor insists that, "the check be redeemable locally, within a reasonable distance to the place of business." In other words, the convenience check must meet the same requirements as a company-issued paycheck.

In a later correspondence, the Chief of the Performance and Compliance Unit responded directly to the employer involved in the original complaint, confirming that its specific program was compliant. The Chief again stressed the employer's responsibility for ensuring the employee option to receive all of their pay without any fee, to include free check cashing.

POSITIVE OUTCOME FOR ALL

In working with Vermont on the employee complaint, several items became very clear:

- The employee complaint did not contain all of the information about the program and, in fact, misstated the options offered to the employee.
- State regulators might not fully understand paycard programs.
- Vermont wanted to ensure that employers could not eliminate the employee option to use direct deposit to their personal bank accounts.
- Vermont assumed that employees in a paycard program would be forced to pay fees to access their pay, so they prohibited them across the board.
- As the state learned the details of this employer's program, it was satisfied that the program protected direct deposit to a personal bank account while providing other free access options.

This case is a good example of how an employer, working with its paycard provider in conjunction with the APA, was able to receive a favorable decision regarding its pay distribution program. It took:

- An employer that was willing to challenge an initial decision
- A paycard provider that was willing to engage legal counsel in discussions with the state agency, to explain the details of the program
- APA involvement to provide a third-party communication outlet
- An open-minded state agency that was willing to learn the complete features of the employer's program

This combination of factors created a positive resolution for all. The state maintained protection of employees' access to pay without any fee. Unbanked employees were able to take advantage of electronic pay. Employers were able to increase the service level of pay delivery and decrease the cost of pay distribution at the same time. It was a true win-win situation. ■