California Paycard Bill: APA Asks Members to Write to State Senate

A bill that would regulate the use of payroll debit cards has been passed by the California Assembly (A.B. 51) and is currently being considered by the state Senate (S.B. 931). The APA believes that the bill, as currently written, is a step backward for employers, employees, and paycard providers alike and asks that APA members doing business in the state of California write to share their concerns with state senators. A letter for members’ use can be downloaded from the APA Government Relations website at www.americanpayroll.org/government/government-007/. Members can identify their state senators at http://senate.ca.gov/senators.

The APA has been working diligently with other stakeholders and legislators to amend the language of the bill. Notably, we have succeeded in having language removed from the bill that would have exposed employers to massive penalties for minor offenses. While much improved, S.B. 931 in its current form still would require employers to provide free banking services to employees being paid by paycard, which is far beyond the requirements associated with any other payment method.

Impact of Durbin Amendment

The transaction fees credit agencies can charge to merchants that accept various credit and debit cards have been reduced, due to a controversial amendment Sen. Dick Durbin (D-Ill.) inserted in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Overall, the banking industry expects to lose hundreds of billions of dollars in revenue.

It is not yet clear whether the price of consumer goods will drop slightly because of the lower fees, but the impact of the Durbin Amendment is now beginning to be seen in banks across the country as free checking is being replaced by fee checking. And Chase, SunTrust, and Wells Fargo have announced that they will begin charging account holders monthly fees for unlimited debit card purchases.

The latest version of S.B. 931 includes a laundry list of services that must be provided free of charge to cardholders. These services include multiple free ATM transactions (above and beyond the requirement to provide employees with full, free access to their wages) and multiple calls to a live service agent. These items are expensive services for issuers to provide. The industry standard is to provide one means per pay period for an employee to receive his or her entire wages without incurring a fee. Interactive voice response systems for customer service are also standard.

Providing these banking services comes at a cost, which is likely to be passed on to employers if banks cannot charge consumers directly. This will negate any savings paycards provide when compared to paper checks. Ultimately, it is widely believed in the industry that the increased costs and administrative burdens imposed by S.B. 931 will discourage the use of paycards in California because they will outweigh the benefits the cards provide to employers, thereby denying the benefits to employees as well.

California bill is a poor model

Paycard issuers are tracking the developments of S.B. 931 closely. In discussions with card providers and bankers, the APA has learned that a number of paycard issuers are debating whether to continue providing services in California if this bill passes. One thing appears clear: it is too expensive for some providers to develop and maintain one system for California and another for the rest of the nation. Perhaps even more devastating for the industry, however, would be if the California provisions are picked up in other states. Currently, nearly half of all states do not address paycards at all in their wage payment statutes.

For more on APAs efforts regarding the California paycard bill, see “Inside Washington” for July.

House May Put IRC §3402(t) Implementation on Hold

On August 23, House Majority Leader Eric Cantor (R-Va.) announced that House Republicans will attempt to repeal IRC §3402(t). Section 3402(t) was enacted as part of the Tax Increase Prevention and Reconciliation Act of 2009 (Pub. L. No. 109-222). It generally requires information reporting and withholding at the rate of 3% on payments to persons providing property or services to a government entity with $100 million or more of annual expenditures that are subject to its provisions.

Cantor stated that, “We will repeal the 3% withholding rule, which serves as an unnecessary tax increase on those who do business with the government.” He did not provide any further information, including whether and when a vote will be held. Cantor is not alone in his effort to repeal the law. Rep. Wally Herger (R-Calif.) and Sens. Scott Brown (R-Mass.) and David Vitter (R-La.) have all introduced bills during the current session in an effort to repeal the withholding requirement. Additionally, many tax, payroll, and accounts payable professionals have expressed concerns about the compliance costs and administrative burden IRC §3402(t) will impose.

The main purpose of §3402(t) is to bar government contractors that may owe taxes from continuing to do business with the government. According to the Government Accountability Office, about 3,700 contractors hired to perform work under the American Recovery and Reinvestment Act of 2009 owe nearly $750
million in taxes from the more than $24 billion in income they have received under government contracts.

Recent activity

On May 9, the IRS issued final regulations on withholding under §3402(t) (see PAYROLL CURRENTLY, Issue No. 6, Vol. 19). Notably, the regulations postpone the new withholding requirement until calendar year 2013. In addition, an exception to the withholding requirement is made for payments under contracts already existing on December 31, 2012.

On August 3, the IRS issued Frequently Asked Questions (FAQs) on the withholding and information reporting requirements under §3402(t) (see PAYROLL CURRENTLY, Issue No. 9, Vol. 19).

Will the IRS Eliminate the High-Low Per Diem Substantiation Method for Expenses?

The IRS recently announced that it intends to discontinue the high-low per diem method for substantiating business travel expenses (see PAYROLL CURRENTLY, Issue No. 8, Vol. 19). This announcement comes roughly a year after the IRS issued Revenue Procedure 2010-39, which included a request for comments on the continuing need of employers to use the high-low method. The IRS said it received no public comments on the issue.

In an effort to determine whether APA members rely on the high-low method and would be negatively affected by the IRS’ discontinuance of the method, the APA Government Relations Department sent out a request for feedback from members of the Government Relations Task Force that asked:

1. Whether an employer uses the high-low method,
2. If yes, what the employer likes and dislikes about the method,
3. How often the employer uses the method, and
4. For any other general comments.

Member feedback

Despite the fact that members were given only three weeks to answer our call for comments, we heard from many of you. An overwhelming majority of respondents – 87.5% – indicated that their employer does not currently use the high-low method for substantiating business expenses. Most of the employers that do not use the high-low method require employees to submit actual receipts for business expense reimbursements. Many payroll providers responded that they have never worked for a company that uses the high-low method.

Critics of the high-low method said they thought the IRS-approved amounts were unrealistic in light of the actual costs of lodging, meals, and incidentals in those areas. Some respondents said they thought the IRS did not include enough cities on the “high” cost list and that more should be added. They said that it was difficult for employees to find comfortable lodging and a good meal in cities that were not listed as “high” cost, but that are just as expensive to visit.

Most employers that use the high-low method said they use it in specific and isolated situations. For example, some employers use it for employees who have to travel frequently to high cost areas. Also, some employers use this method because it provides a baseline for certain localities, thus allowing expenses to be anticipated and even calculated in advance.

Some respondents noted the ease of using the high-low method when it comes to dealing with employees. Employers simply provide employees with the rate they are to use for lodging, meals, and incidentals. If the employee goes outside the amount permitted, he or she will not be reimbursed and is responsible for the extra amount. This system benefits employees because they do not have to worry about keeping receipts or run the risk of not being paid.

Controlling Your Unemployment Costs

by Stephanie Salavejus, CPP, Vice President & COO, PenSoft

According to a Bureau of Labor Statistics report in June 2011, the number of unemployed persons and the unemployment rate were essentially unchanged over the month. Since March, the number of unemployed persons has increased, and the unemployment rate has risen. Even though the President has been reported that the economy is improving, it remains tenuous.

Due to the heavy demand for unemployment benefits over the past couple of years, many state trust funds are being depleted and the states are borrowing from the federal government. Consequently, many states have increased their UI rates and it is anticipated even more states will be increasing their tax rates and/or increasing the wage base in the coming year to offset the shortage.

While the nation argues over the best way to repair the system, employers are left to deal with the reality of an increase in unemployment rates. An employer’s ability to maintain employment levels and hire workers depends on whether revenue exceeds costs. Payroll costs, including UI, are a significant part of a company’s total cost of doing business. So what can employers do to help keep unemployment costs under control?

Employers can keep their unemployment costs under control by following a few basic principles:

- Review employment policy manuals annually and provide updated copies to all employees. Employment policy manuals provide a means for consistent enforcement of company rules. It is critical to follow your company policies. A disciplinary action or termination should be based on some form of policy infraction and/or poor performance. A good employment policy manual can reduce the likelihood of lawsuits.
- Train supervisors and management how to properly document and handle employee and workplace issues. It is critical to have good written documentation leading up to a termination. All documentation should be accurate and objective because it will be the backbone for employment decisions.
- Verify that the UI rate in your payroll software is correct. Most state unemployment agencies send out the new year’s rate notice well in advance, allowing time for employers to update their software systems. Employers should verify that the figures used are correct by comparing the taxable wages to their quarterly returns and the benefits charged to their monthly/quarterly charge notices. Submit payments and unemployment reports on time. Proper budgeting will ensure you have the money to pay your unemployment taxes when due. In extreme circumstances, attempt to avoid costly failure-to-file penalties by filing the UI report on time, even if you cannot pay the taxes when due.
- Review the benefits reports for accuracy and challenge questionable charges. Fraudulent unemployment claims undermine the system and hurt both employers and employees. You can help control these costs by thoroughly reviewing every notice sent to you.
- Complete any request for separation information from the Employment Commission. The separation and wage report should be completed and returned by the return date shown on the form. Include any written information (reprimands, warnings, attendance records, signed policy statements, etc.) to support your position.
- Participate in the Employment Commission fact-finding interview. The employer’s participation in the interview adds weight to the case and provides the opportunity to offer rebuttal to any statement made by the employee during the interview.