I-94 Automation Still Troubling Employees, Employers

U.S. Customs and Border Protection (CBP) began its Form I-94, Arrival/Departure Record, automation at air and sea ports of entry in the spring, but employees and employers may still be experiencing headaches with the new system. The main problem is that not all new hires are able to access their I-94 information from CBP’s online system. New hires who begin work almost immediately after entry into the U.S. are experiencing problems. A notice posted on the CBP website (https://i94.cbp.dhs.gov/i94/request.html) states, “If you are trying to retrieve an I-94 number from an entry from March 2013 to May 2013, it may not currently be available in the system.”

“As with any technology solution there are bound to be bugs and unforeseen issues that can have a negative impact on the availability and/or performance of the system,” says Dave Fowler, Chair of APA’s Government Affairs Task Force Subcommittee on Immigration. “Form I-94 automation is somewhat problematic because Form I-9 and E-Verify require some employees to obtain information from the Form I-94 automation system to meet Form I-9 and E-Verify requirements.”

Employers with new hires providing electronic I-94 documents should exercise caution when completing the Form I-9. Employers should document any reason for delays in completing the form with a memo to the file explaining that the employee could not access his or her I-94 information using the online system. In the interim, the employer should write “I-94 number pending” in the “document number” field in Section 2 until the employee receives an I-94 number. Once the number is provided by the employee, the employer should amend Section 2 by filling in the I-94 number and initial and date the entry.

Employees also need to know which government agency (USCIS or CBP) issued the I-94 admission number from USCIS within the U.S., “N/A” should be entered by the employee for the foreign passport number and country of issuance and the employee should write the admission number and country of issuance and the employee should write the I-94 admission number in Section 1. Generally, USCIS issues Form I-94 if there is a change in an employee’s immigration status.

If CBP issued the I-94 admission number, the employee must complete Section 1 by listing the admission number as well as their foreign passport number and country of issuance. CBP usually issues the form to foreigners entering through a land, sea, or air port of entry.

USCIS officials have also stated that due to CBP’s I-94 automation initiative, some employees may present I-94 documents that are in a different format than employers are used to seeing – e.g., an I-94 with the printed number crossed out and a new number written on the form, or a print out.

Form I-94 is issued to all visitors entering the U.S., and the new automation process is designed to eventually eliminate the paper version of the form. All travelers, with the exception of asylees and refugees, will receive an admission stamp, along with an instruction sheet showing how to access and print their I-94 from the CBP website.

Form I-94 is issued to all visitors entering the U.S., and the new automation process is designed to eventually eliminate the paper version of the form. All travelers, with the exception of asylees and refugees, will receive an admission stamp, along with an instruction sheet showing how to access and print their I-94 from the CBP website.

Current Form I-9 instructions require an employee to provide a foreign passport and Form I-94 to qualify as a list A document. Under the new automation process, employees will need to visit the CBP website to retrieve their I-94 and present this, along with a foreign passport, to employers. In this instance, employers should write in “I-94” under “Document Title” and “CBP” under “Issuing Authority” when completing Section 2.

Employees having difficulty obtaining an I-94 number may also want to note this on Section 1 of the Form I-9 by explaining that they did not receive a number due to a governmental system issue. Once the employee receives the I-94 number, he or she should go back and amend Section 1 by filling in the number and initial and date the entry.
Worker Sues Employer Over Paycard Requirement and Fees

A worker at a fast-food restaurant in Pennsylvania has sued her employer over the method by which she was paid, claiming that her employer would only pay her through a payroll debit card and denied her request for payment by direct deposit or check. Fees associated with the card would drive her pay below minimum wage, she claimed. Further, she claimed that payroll debit cards do not comply with state law requiring that wages “be paid in lawful money of the United States or check” [Gunshannon v. Mueller (McDonalds); www.cefaloandassociates.com/images/dynamic/resources/CefaloResource_16.pdf].

Facts and allegations

On April 24, 2013, Natalie Gunshannon began work for a McDonald’s franchise in Shavertown, Pennsylvania, at an hourly wage of $7.45. On Friday, May 10, she was paid for the period running Monday, April 22, through Sunday, May 5. She was given a Visa-branded JP Morgan Chase payroll card bearing her name, instructions on how to activate the card, a complete fee schedule, and a brochure on the Chase paycard program. She was also given a pay statement showing net earnings of $287.87.

The fee schedule stated that cardholders were entitled to one over-the-counter (OTC) cash withdrawal each pay period at no cost. All point-of-sale purchases were free of charge, as were monthly balance statements. Fees would be incurred for ATM withdrawals ($1.50), ATM balance inquiries ($1.00), subsequent OTC withdrawals ($5.00), and various other transactions. After 90 days of inactivity, a $10 monthly inactivity fee would apply.

According to the complaint, Gunshannon determined that she “was unable to access her earned wages from McDonald’s through their JP Morgan Chase Payroll card without incurring fees and costs.” A few days after receiving the card, on May 14, Gunshannon asked her managers for an alternate method of payment, either a paper check or direct deposit. Her managers refused, allegedly replying, “We only pay on the card. If you don’t activate the card, there is no way for us to pay you.”

State law

Pennsylvania follows federal law concerning the minimum wage, requiring that employees be paid at least $7.25 an hour. The state’s wage payment laws do not mention the use of payroll debit cards; but, in 2009, the state’s Department of Labor and Industry (DOLI) wrote to APA that, “under Pennsylvania law, payment by direct deposit and debit card is permissible. However, an employee must agree to one of these forms of payment. It appears that an employee may not be compelled to accept payment through direct deposit or a debit card.”

Regarding payroll card fees, DOLI wrote, “Any deduction of fees associated with an employee’s use of the payroll debit card must be for the benefit of the employee.” APA interpreted that to mean ATM fees are acceptable so long as the employee has an alternate method of receiving his or her wages in full.

DOLI added that the opinion expressed in the letter was subject to change. Since 2009, the state has not publicly issued a policy statement that would contradict the letter.

Excessive fees?

Gunshannon claimed that she could not access her pay without paying a fee, although the fee schedule clearly stated that she was entitled to a free OTC withdrawal.

According to the Chase website, there is no Chase bank within 30 miles of her hometown of Dallas, PA. There are, however, at least 10 Visa member banks in Dallas, PA. Since her card was branded by Visa, she was entitled to walk into any bank that displayed the Visa logo and cash out her card in full, at no cost.

While free ATM access might be more convenient to an employee, it does not comply with the need to provide access to the employee’s entire pay. Through an ATM, Gunshannon would not have been able to withdraw her last $7.87. Providing a free OTC withdrawal ensures that employees are able to access their pay down to the penny.

Need for clearer direction

Assuming the facts of the case are as Gunshannon states, and assuming the DOLI has not changed its opinion, it would appear that payroll cards are a legitimate form of payment in Pennsylvania and that the Chase card program would not lower her pay below minimum wage. At the same time, it appears that the McDonald’s franchise should have honored Gunshannon’s request for an alternative form of payment.

Without a law, regulation, or published opinion from the state, it can be difficult for employers to know what latitude they have in their business practices. Citing this case in Pennsylvania, APA wrote to lawmakers in New York who were considering bills to regulate the use of payroll debit cards.

“Like Pennsylvania, New York has failed to expressly address payroll cards in its statutes and regulations,” wrote William Dunn, APA’s Director of Government Relations. “This has led many APA members, and we are sure other employers as well, to be unclear about their responsibilities under state law. A. 6419-B and S. 4392-B are necessary to provide employers with clear guidance on the use of electronic payment methods and to provide workers the protections necessary to assure that events like those alleged in the Pennsylvania lawsuit do not occur in New York.”