Ohio State Representative John Rogers (D-60th) has introduced legislation that would require employers that offer payroll cards to honor employees’ requests for cash wage payments [H.B. 253; www.legislature.state.oh.us/bills.cfm?ID=130_HB_253].

In October, the Payroll Card Subcommittee of APA’s Government Affairs Task Force wrote to Rogers to explain the difficulty the legislation would cause, making payroll cards virtually unusable.

**Cash wages.** The bill lists four permissible methods of wage payment, including "lawful money of the United States," check, direct deposit, and payroll cards. It then requires that any employer offering a payroll card also "permit the employee to select the method by which the employer shall pay the employee's wages to the employee."

APA responded that, "H.B. 253 would force businesses to make wages available in cash if payroll cards are offered to employees. Cash is a terribly impractical method of wage payment and has not been in wide use for nearly 100 years. Theft presents a risk for businesses carrying large amounts of cash to pay employees. Moreover, the labor cost required to handle, count, and distribute wages in cash … is so cost prohibitive that employers are likely to stop offering payroll cards to employees in Ohio if H.B. 253 becomes law. Such a result would be unfortunate, given that payroll cards are one of the least expensive and safest ways for employees to receive their wages."

According to Rogers’ office, the requirement to provide cash wages was not intended. Since hearing from APA and other stakeholders, Rogers has decided to amend the bill before assigning it to a legislative committee for further consideration. APA expects to see new language within the next few weeks.

**Fees.** Rogers reportedly introduced H.B. 253 in response to concerns that some employers were mandating the use of payroll cards and that, while payroll cards can offer real benefits for workers who do not have bank accounts, individuals should not have that form of pay mandated by their employer when fees are involved.

This reflects a common misunderstanding. Perhaps because the fee schedules are provided so clearly, many assume that payroll cards are more expensive than other methods of wage payment. In fact, the user fees associated with payroll cards compare quite favorably to both checks and direct deposit.

APA’s letter to Rogers noted that, “A recent study by the Payment Cards Center of the Federal Reserve Bank of Philadelphia revealed that many employees who use payroll cards do so without ever incurring a fee. However, just like employees with direct deposit who decide to access wages from an out-of-network ATM, employees with payroll cards may incur fees if they fail to take advantage of the many access methods that are offered free of charge. And, as required by law, employees are always provided with clear notice regarding fees.”

The letter went on to say that, “payroll cards offer a valuable form of electronic payment for employees without bank accounts or with limited access to traditional banking services (referred to as the underserved population). These employees are unable to receive direct deposits and are likely to be the principal users of the cards. Payroll cards guarantee underserved employees a means of accessing their full wages without cost. Without payroll cards, underserved employees often are forced to rely on expensive alternative financial services, such as check cashers, to access their wages. They endure yet more expenses when forced to purchase money orders to pay bills. These fees can be eliminated when employees are paid using a payroll card:"

**Unnecessary regulation?** To address another common misconception – that payroll cards are an unregulated financial vehicle – APA’s letter said that, “To the extent that H.B. 253’s sponsors view the bill as an effort to regulate payroll cards rather than outlaw them, this effort is unnecessary. The Federal Reserve Board identified payroll cards as subject to Regulation E, which triggers many important consumer protections. For example, if a payroll card is used fraudulently, the cardholder is only liable for up to $50 in fraud losses if he or she reports the card as lost or stolen in a timely manner. Other protections include disclosure requirements, account history access, and error resolution rights. On September 12, 2013, the Consumer Financial Protection Bureau issued a letter to several U.S. Senators and a public bulletin reiterating its view regarding federal oversight of payroll cards.” The CFPB’s primary points were to clarify for all employers that payroll cards cannot be the only method of payment offered, and that the CFPB has regulatory authority over financial institutions, payroll card companies, and employers that offer cards (see PAYROLL CURRENTLY, Issue No. 10, Vol. 21).

**Benefits for businesses.** APA’s letter closed with an acknowledgement that payroll cards are less expensive for employers than checks, but noted that cost savings are not
the only reason to embrace them; they also help employers maintain compliance with state and federal wage and hour provisions. “Payroll cards offer businesses an efficient method of wage payment, thereby reducing the cost of doing business in Ohio. Payroll cards eliminate the cost of issuing and distributing paper paychecks and the significant cost of replacing lost and stolen checks. Furthermore, they facilitate full and timely wage payment to employees who are away from the workplace because of travel, illness, severe weather, and natural disasters.”

APA Testifies on Effects of Regulating Payroll Service Providers in Maryland

In response to allegations that a payroll service provider in Maryland stole $106 million from clients’ federal and state tax payments, Senator Barry Glassman introduced S.B. 1068, authorizing a commission to study regulation of payroll service providers in Maryland (see “Inside Washington” for April). “I want to make sure that we take a close look at evaluating any protections that can be put in place to prevent this type of activity from happening again,” he said at the commission’s first meeting. “It has been devastating to many small businesses that thought they had paid their tax obligations, only to find out later that they had fallen victim to fraud.”

The commission recently held a second meeting to hear public testimony on the issue. APA Senior Manager of Government Relations, Brian O’Laughlin, testified regarding the regulation of payroll service providers in Maryland and the effect regulation would have on APA members.

He told the commission that, “Many employers outsource one or more parts of their payroll administration to third party providers. Most commonly, employers use these providers to make required tax deposits and payments and to handle quarterly state unemployment insurance wage and tax reporting and payment and annual W-2 filings and reconciliations. Employers must comply with a myriad of complex federal, state, and local regulations, and hiring a service provider greatly reduces costly IRS and state tax penalties.”

The APA has been involved in the dialogue over regulation of payroll service providers for many years. Since 2007, the APA has met with representatives of the Treasury, the IRS, the IRS Taxpayer Advocate, and the Senate Finance Committee to provide education about the payroll service industry, and to emphasize that overly stringent protections could drive all but the largest service providers out of business and make it necessary for the surviving providers to significantly increase their fees.

In recent years, there have been infrequent but well publicized cases involving payroll service providers that collect tax amounts from clients’ accounts but fail to deposit them with the proper authorities. O’Laughlin testified to the Commission that 99.99% of Reporting Agent clients nationwide have suffered zero losses and have benefited significantly from the specialized knowledge and sophisticated systems of payroll service providers. Moreover, current criminal provisions have been effective in punishing bad actors; virtually every past incident was successfully prosecuted with significant jail terms and restitution.

O’Laughlin testified that APA applauds recent IRS guidance (Rev. Proc. 2012-32; see PAYROLL CURRENTLY, Issue No. 8, Vol. 20), which requires all payroll Reporting Agents to provide a disclosure statement to all clients at the time of contracting and at least quarterly thereafter. “To communicate this guidance to our members, we write articles for our monthly publications and send out compliance updates raising awareness that members should check their tax deposits regularly to verify they are being made.”

Regulation, bonding, and licensing would result in businesses becoming less diligent. Employers may view licensing or even hosting a list of registered service providers as a state endorsement and fail to check their tax deposit status regularly.

Regulation, bonding, and licensing would also raise barriers to competition and raise payroll administration costs. Many APA members work for payroll service providers that would be concerned about the cost and difficulty of obtaining bonds, especially if states were to establish their own licensing requirements.

APA agrees with the need to broadly raise awareness among employers of the risks of using a payroll service provider. We also support the notion that state tax authorities and labor departments should ensure that businesses are able to view their tax accounts to verify receipt of tax payments. This feature should be promoted to raise awareness that periodic verification is necessary to demonstrate diligence in tax administration.

Senator Glassman and Chairman David Roose agreed to work to draft consensus recommendations by the end of November, including how to raise awareness among employers. The commission also agreed that requiring payroll service providers in Maryland to be bonded is too burdensome at this time.

USCIS Introduces New Look for Website

U.S. Citizenship and Immigration Services (USCIS) recently unveiled a preview of its newly redesigned website at http://preview.uscis.gov. The redesign was undertaken following an extensive review of website traffic patterns and customer feedback.

The website has a number of new features:
- Flyout navigation menus to reduce the number of “clicks” it takes to reach desired information.
- A “Tools” area featuring the most popular online customer service tools to make it easier to complete electronic transactions.
- Color-coded alerts to improve customer notifications and navigation.

USCIS is also looking for public feedback on the site. If you have any comments, please send them to Brian O’Laughlin at bolaughlin@americanpayroll.org. USCIS would like to hear:
- What is your reaction to the new site’s content and “look and feel”?
- Did you experience any broken links, page errors, or parts of the site that did not work as you expected?
- If you could make one improvement to the new uscis.gov website, what would it be?