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Summary of California Payroll Card Legislation

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Just prior to adjournment for the year, the California legislature passed S.B. 931—a bill to amend the Labor Code[1] to regulate the issuance of payroll cards. The bill represents the California legislature's second attempt at passage of a payroll card bill. The enrolled bill has been presented to Governor Brown and must receive his signature by October 9, 2011.

If enacted, S.B. 931 would permit an employer to pay wages to an employee using a payroll card only if the employer does all of the following:

- Gives the employee the option of receiving wages by 1) direct deposit to a depository account of the employee's choosing, 2) paper check, or 3) payroll card;
- Obtains the employee's written consent to receive wages by payroll card;
- Does not make participation in the payroll card program a condition of being hired or of continued employment;
- Selects a payroll card issuer that offers employees a process for disputing account fees that are inconsistent with the payroll card fee schedule, as if the fee dispute constitutes an error under the Federal Reserve Board's Regulation E; and
- Agrees to honor an employee's written request to change the method of receiving wages, within two pay periods from the time of the request.

In addition, prior to obtaining the employee's written consent to receive wages by payroll card, the employer would be required to provide the employee with all of the following information, in the language in which the employer normally communicates employment-related information to the employee:

- A description, in plain language, of the employee's options for receiving wages;
- The prepaid account agreement, including a clear, conspicuous, and complete itemized fee schedule for the account in a form the employee can retain; and
- A list of the free services required to be made available to the employee under S.B. 931, as are enumerated below.

S.B. 931 also would require the payroll card issuer to provide for all of the following at no cost to the employee:

- The payroll card on which the employee would receive wages, with no charges for application, initiation, loading, or participation;
- One replacement payroll card per year;

[1] S.B. 931 would amend sections 215 and 225.5 of the Labor Code.

- The ability to make up to one withdrawal per pay period from an ATM outside the network of the issuer, without incurring a fee charged by the issuer (although the issuer would not be responsible for fees imposed by the financial institution whose ATM is accessed);
- The ability to make at least four withdrawals per pay period from an ATM within the network of the issuer;
- The ability to withdraw the entire amount of wages stored on the payroll card at least once each pay period;
- The ability to use the payroll card for a minimum of two point-of-sale transactions each pay period, without incurring a fee charged by the issuer (although the issuer would not be responsible for any fees imposed by the retailer);
- The ability to access balance or account information online, or through another automated system, 24 hours a day, 7 days a week;
- The ability to make at least three telephone calls each month to a live customer service representative;
- The option to receive ongoing, periodic statements, in either written or electronic form, once every two months, if there has been activity on the account during either month, or once every three months, if there is a balance on the account but there has been no activity during that three-month period; and
- The ability to close the payroll card account and obtain payment of the balance remaining on the card.

In addition, under S.B. 931, all of the following requirements would have to be met:

- The payroll card program should be designed to prevent withdrawals in excess of the account balance and, to the extent possible, protect against the account being overdrawn;
- The payroll card account is not subject to fees based on an employee's account balance or fees that are triggered by declined transactions or overdrafts;
- The funds in the payroll card account do not expire (although the payroll card account could be closed after 24 continuous months of inactivity, with reasonable notice to the employee, provided that the remaining funds in the account are refunded to the employee at no cost);
- The payroll card account is not linked to any form of credit, including a loan or cash advance on future wages; and
- The payroll card account provides deposit insurance for the employee, on a pass-through basis, from the Federal Deposit Insurance Corporation or the National Credit Union Administration.

The bill would require the employer to deposit all wages owed to a participating employee into the employee's payroll card account on or before the employee's designated payday.

Under S.B. 931, an employer that executes a payroll card agreement with an issuer in compliance with all of the above provisions would not be liable for any fee charged to an employee by the payroll card issuer, so long as the employer does not receive any portion of the fee, and the employer is not the card issuer. In addition, the bill would require an employer that pays wages to an employee under a payroll card agreement that does not comply with the requirements of S.B. 931 to reimburse the employee for all fees charged by the issuer that are inconsistent with the fee restrictions of the legislation.

S.B. 931 also would make a violation of the payroll card provisions a violation of the Labor Code. Thus, a violation of any of the payroll card provisions could be a misdemeanor under the Labor Code.

If signed into law by the Governor, S.B. 931 would be effective on January 1, 2012. A payroll card agreement entered into before January 1, 2012 would not be subject to the requirements of the legislation until the earlier of renewal date of the agreement, or January 1, 2013.

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