

ACT 208

H.B. NO. 1814

A Bill for an Act Relating to Payment of Wages.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the intent of chapter 388, Hawaii Revised Statutes (chapter 388), is to protect the payment of workers' wages and other compensation, encourage employers to pay wages promptly, and reduce workers' economic losses. Chapter 388 only addresses payment methods of cash or check convertible to cash but does not specify payment methods through direct deposits or pay cards.

The legislature further finds that the department of labor and industrial relations has long recognized the voluntary use of direct deposits as a method that satisfies the payment of wages. According to the Hawaii Bankers Association, approximately eighty-five per cent of all employees in Hawaii are paid by direct deposit.

The legislature additionally finds that there is an increasing number of employers in Hawaii who pay their employees through a pay card. According to the Hawaii Bankers Association, approximately fourteen thousand employees in Hawaii receive their wages through this method of payment.

The legislature also finds that numerous concerns have been raised throughout the nation over the use of pay cards. To address these concerns, certain worker protections are needed for the use of pay cards in Hawaii. These protections will ensure that employers retain the option to pay their employees by pay card or direct deposit and will also ensure that employees are able to authorize, after full disclosure, the payment of their wages through pay cards and are fully informed about the use of a pay card, such as options for receiving wages; information about pay card fees; and what free services the pay card provides, including the ability to access the employee's funds from the pay card.

The purpose of this Act is to modernize chapter 388 to:

- (1) Authorize employers to pay wages to an employee using a pay card if certain requirements are met;
- (2) Reflect direct deposit as a current practice in the payment of wages under certain conditions;
- (3) Hold an employer responsible for any fees incurred if an employer has insufficient funds in the employer's bank account for an electronic transfer of the employee's wages; and
- (4) Ensure protection of the payment of workers' earned wages.

SECTION 2. Chapter 388, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§388- Payment of wages by pay cards. (a) Notwithstanding section 388-2, an employer shall not pay wages due to the employer’s employees by use of a pay card unless the following requirements are satisfied:

- (1) The employee shall be given the option of receiving the employee’s wages by direct deposit to a depository account of the employee’s choosing, receiving payment by paper check, or receiving payment by pay card before the employee selects direct deposit, pay card, or paper check;
- (2) The employer shall not mandate an employee’s use of a pay card;
- (3) The employer shall not make participation in the pay card program a condition of hire or continued employment;
- (4) The employee shall voluntarily authorize the payment of wages using a pay card in writing or via electronic signature, without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the pay card or pay card account;
- (5) Prior to obtaining the employee’s consent, the employer shall provide the employee in writing, in plain language in at least ten-point font:
 - (A) A description of the employee’s options for receiving wages;
 - (B) The pay card fee schedule in a form that the employee may retain for the employee’s records stating the dollar amount of all fees;
 - (C) A notice that states whether third parties may assess additional fees relating to the use of the pay card; and
 - (D) A list of the services available to the employee pursuant to paragraph (8);
- (6) The employer shall be responsible for fees that have been assessed against the employee outside the pay card fee schedule;
- (7) The employer shall agree to honor a written request by the employee to change the method of receiving wages from a pay card to another method offered by the employer within two pay periods from the time of the request;
- (8) The pay card shall provide for all of the following, at no cost to the employee:
 - (A) A pay card on which the employee may receive wages, with no charges for the application, initiation, transfer, loading of wages by the employer, privilege of participation, or distribution or delivery of the initial pay card;
 - (B) The ability during each pay period for the employee to make at least three free withdrawals from the pay card, at least one of which permits withdrawal of the full amount of the employee’s net wages on the card at a federally insured depository institution or at that institution’s affiliated automated teller machines;
 - (C) The means to access the balance or other account information online and via telephone offered in conjunction with the pay card in a manner that allows access to account information twenty-four hours a day, seven days a week without charging a fee;
 - (D) A readily accessible electronic history of the employee’s account transactions covering at least sixty days preceding the date the employee electronically accesses the account;

- (E) Upon oral or written request or via electronic signature by the employee, a written history of the account transactions covering at least sixty days prior to the employee's request;
 - (F) No pay card shall assess an overdraft fee or charge pursuant to the pay card issuer's overdraft service against an employee or the employee's account; and
 - (G) The ability to close a pay card account and obtain payment of the balance remaining on the card;
- (9) The pay card shall not impose fees based on an employee's account balance;
 - (10) The employer shall ensure that the pay card account provides one free replacement pay card per year at no cost to the employee at least fifteen days before the pay card's expiration date; provided that the replacement pay card need not be issued if the pay card has been inactive for a period of not less than twelve months or the employee is no longer employed by the employer;
 - (11) Pooled pay card accounts shall be permitted; provided that each subaccount shall be for the sole and exclusive benefit of the named employee, and not subject to the claims of the employer's creditors; provided further that each employee's pay card account shall be eligible for deposit insurance on a pass through basis, including:
 - (A) The account records of the federally insured depository institution shall disclose the existence of the agency or custodial relationship;
 - (B) The records of the federally insured depository institution, custodian, or other party shall disclose the identities of the employee cardholders who actually own the deposits and the amounts owned by each employee cardholder; and
 - (C) The funds in the account shall be owned by the individual employee cardholders under an agreement among the parties or pursuant to applicable law and shall not be used by the employer's creditor; and
 - (12) The funds in the pay card account shall not expire. The pay card account may be closed after six continuous months of inactivity, with reasonable notice to the employee; provided that the remaining funds in the pay card account shall be refunded to the employee at no cost to the employee.
 - (b) An employer shall deposit all wages owed to an employee, who has elected in writing or via electronic signature to receive the employee's wages through a pay card, into the employee's pay card account on or before the employee's designated payday. The employee shall be deemed to have been paid wages owed at the time the wages are deposited into the employee's pay card account and the employee has access to those wages. If there is any delay of an employee's access to wages due to an error by the issuer, the employer shall not be held liable for this delay; provided that the employer deposited the proper amount of wages into the account on or before the designated payday and the employer is in compliance with subsection (a).
 - (c) An employer shall be liable for any wages due and not timely paid onto a pay card pursuant to subsection (b).
 - (d) The employer shall provide twenty-one days prior written notice to any change to the pay card program taking effect. The written notice shall state in plain language in at least ten-point font any change to any of the terms and conditions of the pay card account, including any changes in the itemized list of fees.

(e) The employer shall comply with all applicable recordkeeping requirements under this chapter and section 387-6.

(f) The employer's obligation under this section shall cease sixty days after the employer-employee relationship ends and the employee has been paid the employee's final wages."

SECTION 3. Section 388-1, Hawaii Revised Statutes, is amended by adding five new definitions to be appropriately inserted and to read as follows:

"Electronic transfer" means any transfer of funds, other than transactions originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal or computer so as to order, instruct, or authorize a federally insured depository institution to debit or credit an account. "Electronic transfer" includes but is not limited to point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by a telephone conversation.

"Issuer" means the pay card issuer authorized to accept deposits and whose deposits are federally insured, and includes a person acting as a direct or indirect agent or administrator of an issuer.

"Pay card" means a prepaid debit card distributed to an employee by an employer, or by another entity by arrangement with the employer, through which the employer provides the employee access to the employee's wages and is:

- (1) Issued by a federally insured depository institution authorized to accept deposits; and
- (2) Used by an employee to access wages from a pay card account and is redeemable at multiple unaffiliated merchants or service providers or automated teller machines.

"Pay card account" means an account that is directly or indirectly established by an employer and to which transfers of the employee's wages are made.

"Pay card fee schedule" means a written list of fees that may be charged to an employee by an issuer in connection with a pay card account or an explanation of how the fees will be determined."

SECTION 4. Section 388-2, Hawaii Revised Statutes, is amended to read as follows:

"§388-2 Semimonthly payday[-]; method of payment of wages. (a) Every employer shall pay all wages due to the employer's employees at least twice during each calendar month, on regular paydays designated in advance by the employer, in lawful money of the United States [ø], with checks convertible into cash on demand at full face value thereof[-]; by direct deposit to the employee's account at a federally insured depository institution as provided in subsection (d), or by other means as provided in section 388- ; provided that when a majority of an employer's employees or a majority of the employees in a collective bargaining unit recognized by an employer or established by law elect, in a secret ballot election under procedures approved by the director of labor and industrial relations, to be paid once a month on a regularly scheduled basis, the employees shall be paid on such monthly basis. The elections shall not be held more frequently than once in every two years and each election shall be valid for a period of two years.

(b) The earned wages of all employees shall be due and payable within seven days after the end of each pay period.

(c) The director may, upon application showing good and sufficient reasons, permit an employer to:

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- (1) Establish regular paydays less frequently than semimonthly; provided that the employee shall be paid in full at least once each calendar month on a regularly established schedule; or
- (2) Pay earned wages within fifteen days after the end of each pay period.
- (d) An employer may pay wages due to the employer's employees by direct deposit to the employee's account at a financial institution; provided that:
 - (1) The employee has voluntarily authorized, in writing or via electronic signature, the direct deposit to the account and financial institution of the employee's choice;
 - (2) The deposits and accounts of the financial institution selected are insured by the Federal Deposit Insurance Corporation or any other comparable federal or state agency;
 - (3) The employee may cancel the direct deposit at any time with reasonable notice;
 - (4) The employer shall provide a pay statement as required under section 388-7(4);
 - (5) No employee shall be required to pay any costs or fees for the direct deposit of wages into the employee's account; and
 - (6) No employee may be disciplined or otherwise penalized for authorizing or refusing to authorize the direct deposit of wages."

SECTION 5. Section 388-5.5, Hawaii Revised Statutes, is amended to read as follows:

“~~§388-5.5~~ Payment of wages by check[-] or electronic transfer. Whenever an employee receives the employee's wages from the employee's employer in the form of a check or electronic transfer for which insufficient amounts are available in the bank account of the employer, the employer shall be liable for any bank's special handling fee which the employee may incur by reason of negotiating the check[-] or the electronic transfer.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 2014; provided that:

- (1) Section 2 shall take effect with the payroll period beginning on September 1, 2014; and
- (2) Sections 4 and 5 shall take effect upon approval.

(Approved July 2, 2014.)

Note

1. Edited pursuant to HRS §23G-16.5.