

Department of Labor Method of Payment Regulations
(AKA Payroll Card Rule)

Beginning on March 7, 2017, the Department of Labor will be enforcing new regulations on how employers can pay its employees. The adoption of this regulation was delayed well over a year as the Department of Labor struggled to address many of the concerns employers had with the rule. While vastly improved, the adopted regulation, will create hardship for the summer camps that utilize payroll cards. Camps that rely on payroll cards to pay its employees should contact the issuer or program manager of its payroll card program to determine if such provider of payroll cards will be offering an economically feasible program for the 2017 summer season.

FOR THOSE CAMPS THAT DO NOT OFFER PAYMENT OF WAGES ON A PAYROLL CARD, THERE IS ONE SIGNIFICANT RULE CHANGE that impacts those camps that pay wages via check.

Beginning on March 7, 2017, employers may not impose any fees in connection with the use of checks. This rule includes charging a fee for the replacement of a lost or stolen check. Please note the Department of Labor does not limit this fee prohibition for lost checks to one per year as it does for replacement of payroll cards below.

Payroll Card Rule

For the first time in New York, the Department of Labor has established rules specifically addressing the payment of wages to an employee through a payroll card. If applicable, these rules should be reviewed very carefully with the provider of your payroll card program, as the rules are quite extensive and burdensome.

Under the new rule, employers must obtain a written consent from an employee seven business days prior to registering such employee for a payroll card account. Additionally, the employer is required to ensure the payroll card program offers at least one ATM that offers free withdrawals within a reasonable distance from the employee's work location or home and at least one method to withdraw the total amount of an employee's wages per pay period. Further, the Department of Labor prohibits a payroll card program from charging an employee, directly or indirectly, a fee for any of the following:

- Any action necessary to receive wages or to become a holder of the payroll debit card;
- Point of sale transactions;
- Overdraft, shortage, or low balances;
- Account inactivity;
- Maintenance;

- Use of customer service assistance via telephone or internet;
- Accessing one's account balance or other account information through an ATM, the internet, Interactive Voice Response systems, or other automated systems;
- Provision of written statements, transaction histories, or the card issuer's policies;
- Replacement of the card at reasonable intervals (i.e., not less than once per year);
- Account closure or issuance of an account's remaining balance by check or other means;
- Declined transactions at ATMs that do not provide free balance inquiries; and
- Any fee not explicitly identified to the employee.

Lastly, an employer may not pass on any of the costs associated with providing a payroll card account to his or her employer nor may an employer make the acceptance of payment of wages via a payroll card a condition of employment.

As always, please feel free to contact Malkin & Ross with any questions or concerns regarding this new regulation.