

Direct deposit is so 20th Century! Many millennials favor paycards

Direct deposit was once new and novel. But we're now about two-thirds through the second decade of the 21st Century, and most employees do have their pay deposited directly into their bank accounts. Most isn't all, however, and that doesn't count employees who don't have bank accounts. For those employees, plastic paycards may be an answer.

Paycards. Some Gen Xers have never written a check and it's quite likely many millennials never will. They're comfortable with debit cards. So offering reloadable paycards to them is one way to ramp up electronic pay. But be careful.

Case: A Pennsylvania Superior Court recently ruled that mandatory use of paycards is prohibited under Pennsylvania law. It rejected the employer's argument that paycards were the functional equivalent of checks or lawful money. Lawful money, the court said, does not include a debit card. (*Siciliano v. Mueller*, No. 1321 MDA 2015, Penn. Supr. Ct., 2016)

Federal Regulation E says that you can't force employees into a paycard program, unless you first give them the choice of paycards or direct deposit, but state laws generally require voluntary participation in paycard programs. All states require that employees paid by paycard be able to cash out their entire net pay without paying any kind of fee.

Landmine: Since employees must have access to their entire net pay fee-free, don't load pay onto employees' personal, general purpose debit cards. **Reason:** Confusion (and lawsuits) will arise, since general purpose cards are subject to the full array of fees. To keep your paycard program on track, consider the following:

- Review the payment options with new hires in person. Have them sign acknowledgments that all payment options were explored and that they have voluntarily consented to paycards before the first payday.
- Make opting out of a paycard program as easy as possible and reassure employees that they won't be retaliated against for doing so.
- Avoid card issuers that provide cash incentives to employers or overdraft protection to employees.
- Offer paycards that are widely accepted at surcharge-free ATMs and cards that come with courtesy checks, no-frills bank accounts and online bill paying.
- Provide employees with appropriate disclosures and ensure that they understand them, especially when fees can be charged; compile employees' questions into FAQs, which everyone can access.

Direct deposit: There's an app for that. A new twist on direct deposit is Remote Deposit Capture, which allows anyone with a smartphone and a bank account app to remotely deposit paper checks. And that's a real threat to your efforts to ditch paper pay checks once and for all.

For new hires, one tried-and-true tactic is to ignore their smartphone apps and include direct deposit enrollment

forms as part of the routine paperwork—W-4s, I-9s, etc.—they must complete. For everyone else, you can point out that there are many more ways that employees' identities can be compromised with smartphone apps than there are with direct deposit. *Remember:* As a rule, you can't force employees into direct deposit.

CHECK, PLEASE: Regardless of your best efforts, some employees may never buy into direct deposit. NACHA, the electronic payments organization that represents banks, has a website full of ideas you can use to coax resistant employees. For more information, point your browser to www.electronicpayments.org/businesses.

Find and fix direct deposit errors. Employees will run right back to their smartphones if repeated mistakes hinder their ability to reach their pay. You can avoid the most common problem—employees' pay wasn't deposited—by having them provide you with voided checks when they enroll (deposit slips won't do), double checking that the surnames on their bank accounts match the names in your payroll and personnel records and reminding employees to notify you immediately if they change direct-deposit-linked banks or accounts.

Fixing other errors is more complicated, however, because you'll have to work with your bank to reverse the electronic transaction. *Heed these reversal rules:*

- Reversals must be originated within five banking days of the settlement of the original (and erroneous) settlement and within 24 hours of when the error was discovered; employees must generally be notified of a reversal.
- If employees have already withdrawn their funds, their banks don't have to comply with your reversal requests.
- If the mistake is an overpayment or underpayment of wages, *don't* ask for a partial reversal. You must reverse the whole transaction and start again.

STATE LAW CHECK-UP: As we said, states usually require that employees voluntarily participate in electronic pay programs. The chart below summarizes the states' direct deposit/paycard rules. "Mandatory" means that a state allows you to make e-payment a condition of employment, if you choose. States that don't have laws aren't included.

Click the chart image to download.

| Payroll Legal Alert | | | |
|--|---|---|-------|
| 2017 All-States Chart on Direct Deposit/Paycards | | | |
| State | Direct Deposit | Paycards | Notes |
| AK | Voluntary | No law | |
| AL | Voluntary; employees opt-in in writing | No law | |
| AR | Voluntary; employees opt-in with check | May be mandatory alternative to direct deposit; employees get free access to full pay; disclosure required | |
| CA | Voluntary; employees opt-in with check | Voluntary; employees get free access to full pay; disclosure required | |
| CO | Voluntary | Voluntary; employees get free access to full pay; may choose another payment method | |
| CT | Voluntary | Voluntary; employees get 5 free withdrawals | |
| DC | Voluntary | No law | |
| DE | Voluntary | Voluntary; employees get free access to full pay | |
| FL | Voluntary | Voluntary; employees get free access to full pay; no check back | |
| GA | Voluntary; disclosure required | Voluntary; no disclosure required; employees get at least 3 free withdrawals per pay period, one of which allow them to withdraw their entire balance | |
| IA | May be mandatory for new direct deposit; employees opt-in with check; disclosure required | Voluntary; employees get free access to full pay | |
| ID | Voluntary | No law | |
| IL | Voluntary | Voluntary; employees may be directed to use direct deposit | |
| IN | May be mandatory; alternative to direct deposit; employees get free access to full pay; disclosure required | No law | |
| KS | May be mandatory; alternative to direct deposit; employees get free access to full pay; disclosure required | No law | |
| KY | May be mandatory; employees opt-in with check or pay without charge | No law | |
| LA | May be mandatory; employees opt-in with check | No law | |
| MA | May be mandatory; employees opt-in with check | Voluntary; disclosure law | |
| MD | Voluntary | Voluntary; employees get free access to full pay | |
| ME | May be mandatory; employees opt-in with check | May be mandatory; alternative to direct deposit; employees get free access to full pay; disclosure required | |
| MI | May be mandatory; employees opt-in in writing | Voluntary; employees get free access to full pay; disclosure required; employees get 10 free withdrawals | |
| MT | Voluntary | Voluntary; employees get free access to full pay; disclosure required | |
| NC | May be mandatory; employees opt-in with check | May be mandatory; employees get free access to full pay; disclosure required | |
| ND | Voluntary | No law | |
| NE | Voluntary | Voluntary; employees get free access to full pay; disclosure required | |
| NH | Voluntary | No law | |
| NJ | Voluntary | Voluntary; employees get free access to full pay; disclosure required | |
| NM | Voluntary | Voluntary; employees get free access to full pay; disclosure required | |
| NV | Voluntary | No law | |
| OH | Voluntary | Voluntary; employees get free access to full pay; disclosure required | |
| OK | May be mandatory; employees opt-in with check | Voluntary; employees get free access to full pay; disclosure required | |
| OR | May be mandatory; employees opt-in with check | Voluntary; employees get free access to full pay | |
| PA | Voluntary; employees get 10 free withdrawals | Voluntary; employees get 10 free withdrawals | |
| RI | Voluntary | Voluntary; employees get free access to full pay | |
| SC | Voluntary; employees get 10 free withdrawals | No law | |
| SD | Voluntary | No law | |
| TN | May be mandatory; employees opt-in with check | May be mandatory; alternative to direct deposit; employees get free access to full pay; disclosure required | |
| TX | May be mandatory; employees opt-in with check | Voluntary; employees get free access to full pay | |
| UT | May be mandatory; employees opt-in with check | Voluntary; employees get free access to full pay | |
| VA | Voluntary; employees get 10 free withdrawals | May be mandatory; alternative to direct deposit; employees get free access to full pay; disclosure required | |
| VT | Voluntary | Voluntary; employees get free access to full pay; disclosure required | |
| WA | May be mandatory; employees opt-in with check | May be mandatory; employees get free access to full pay; disclosure required | |
| WI | May be mandatory; employees opt-in with check | No law | |
| WV | Voluntary | Voluntary; employees get free access to full pay; disclosure required | |
| WY | Voluntary | No law | |

