
A BILL FOR AN ACT

RELATING TO PAYMENT OF WAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

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

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



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

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

- 14 (1) Authorize employers to pay wages to an employee using
15 a pay card if certain requirements are met;
- 16 (2) Reflect direct deposit as a current practice in the
17 payment of wages under certain conditions;
- 18 (3) Hold an employer responsible for any fees incurred if
19 an employer has insufficient funds in the employer's
20 bank account for an electronic transfer of the
21 employee's wages; and



1 (4) Ensure protection of the payment of workers' earned
2 wages.

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

6 **"§388- Payment of wages by pay cards. (a)**

7 Notwithstanding section 388-2, an employer shall not pay wages
8 due to the employer's employees by use of a pay card unless the
9 following requirements are satisfied:

10 (1) The employee shall be given the option of receiving
11 the employee's wages by direct deposit to a depository
12 account of the employee's choosing, receiving payment
13 by paper check, or receiving payment by pay card
14 before the employee selects direct deposit, pay card,
15 or paper check;

16 (2) The employer shall not mandate an employee's use of a
17 pay card;

18 (3) The employer shall not make participation in the pay
19 card program a condition of hire or continued
20 employment;

21 (4) The employee shall voluntarily authorize the payment
22 of wages using a pay card in writing or via electronic



1 signature, without intimidation, coercion, or fear of
2 discharge or reprisal for refusal to accept the pay
3 card or pay card account;

4 (5) Prior to obtaining the employee's consent, the
5 employer shall provide the employee in writing, in
6 plain language in at least ten-point font:

7 (A) A description of the employee's options for
8 receiving wages;

9 (B) The pay card fee schedule in a form that the
10 employee may retain for the employee's records
11 stating the dollar amount of all fees;

12 (C) A notice that states whether third parties may
13 assess additional fees relating to the use of the
14 pay card; and

15 (D) A list of the services available to the employee
16 pursuant to paragraph (8);

17 (6) The employer shall be responsible for fees that have
18 been assessed against the employee outside the pay
19 card fee schedule;

20 (7) The employer shall agree to honor a written request by
21 the employee to change the method of receiving wages
22 from a pay card to another method offered by the



1 employer within two pay periods from the time of the
2 request;

3 (8) The pay card shall provide for all of the following,
4 at no cost to the employee:

5 (A) A pay card on which the employee may receive
6 wages, with no charges for the application,
7 initiation, transfer, loading of wages by the
8 employer, privilege of participation, or
9 distribution or delivery of the initial pay card;

10 (B) The ability during each pay period for the
11 employee to make at least three free withdrawals
12 from the pay card, at least one of which permits
13 withdrawal of the full amount of the employee's
14 net wages on the card at a federally insured
15 depository institution or at that institution's
16 affiliated automated teller machines;

17 (C) The means to access the balance or other account
18 information online and via telephone offered in
19 conjunction with the pay card in a manner that
20 allows access to account information twenty-four
21 hours a day, seven days a week without charging a
22 fee;



1 (D) A readily accessible electronic history of the
2 employee's account transactions covering at least
3 sixty days preceding the date the employee
4 electronically accesses the account;

5 (E) Upon oral or written request or via electronic
6 signature by the employee, a written history of
7 the account transactions covering at least sixty
8 days prior to the employee's request;

9 (F) No pay card shall assess an overdraft fee or
10 charge pursuant to the pay card issuer's
11 overdraft service against an employee or the
12 employee's account; and

13 (G) The ability to close a pay card account and
14 obtain payment of the balance remaining on the
15 card;

16 (9) The pay card shall not impose fees based on an
17 employee's account balance;

18 (10) The employer shall ensure that the pay card account
19 provides one free replacement pay card per year at no
20 cost to the employee at least fifteen days before the
21 pay card's expiration date; provided that the
22 replacement pay card need not be issued if the pay



1 card has been inactive for a period of not less than
2 twelve months or the employee is no longer employed by
3 the employer;

4 (11) Pooled pay card accounts shall be permitted; provided
5 that each subaccount shall be for the sole and
6 exclusive benefit of the named employee, and not
7 subject to the claims of the employer's creditors;
8 provided further that each employee's pay card account
9 shall be eligible for deposit insurance on a pass
10 through basis, including:

11 (A) The account records of the federally insured
12 depository institution shall disclose the
13 existence of the agency or custodial
14 relationship;

15 (B) The records of the federally insured depository
16 institution, custodian, or other party shall
17 disclose the identities of the employee
18 cardholders who actually own the deposits and the
19 amounts owned by each employee cardholder; and

20 (C) The funds in the account shall be owned by the
21 individual employee cardholders under an
22 agreement among the parties or pursuant to



1 applicable law and shall not be used by the
2 employer's creditor; and

3 (12) The funds in the pay card account shall not expire.
4 The pay card account may be closed after six
5 continuous months of inactivity, with reasonable
6 notice to the employee; provided that the remaining
7 funds in the pay card account shall be refunded to the
8 employee at no cost to the employee.

9 (b) An employer shall deposit all wages owed to an
10 employee, who has elected in writing or via electronic signature
11 to receive the employee's wages through a pay card, into the
12 employee's pay card account on or before the employee's
13 designated payday. The employee shall be deemed to have been
14 paid wages owed at the time the wages are deposited into the
15 employee's pay card account and the employee has access to those
16 wages. If there is any delay of an employee's access to wages
17 due to an error by the issuer, the employer shall not be held
18 liable for this delay; provided that the employer deposited the
19 proper amount of wages into the account on or before the
20 designated payday and the employer is in compliance with
21 subsection (a).



1 (c) An employer shall be liable for any wages due and not
2 timely paid onto a pay card pursuant to subsection (b).

3 (d) The employer shall provide twenty-one days prior
4 written notice to any change to the pay card program taking
5 effect. The written notice shall state in plain language in at
6 least ten-point font any change to any of the terms and
7 conditions of the pay card account, including any changes in the
8 itemized list of fees.

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

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

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

17 "Electronic transfer" means any transfer of funds, other
18 than transactions originated by check, draft, or similar paper
19 instrument, which is initiated through an electronic terminal or
20 computer so as to order, instruct, or authorize a federally
21 insured depository institution to debit or credit an account.

22 "Electronic transfer" includes but is not limited to point-of-



1 sale transfers, automated teller machine transactions, direct
2 deposits or withdrawals of funds, and transfers initiated by a
3 telephone conversation.

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

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

12 (1) Issued by a federally insured depository institution
13 authorized to accept deposits; and

14 (2) Used by an employee to access wages from a pay card
15 account and is redeemable at multiple unaffiliated
16 merchants or service providers or automated teller
17 machines.

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

21 "Pay card fee schedule" means a written list of fees that
22 may be charged to an employee by an issuer in connection with a



1 pay card account or an explanation of how the fees will be
2 determined."

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

5 "**§388-2 Semimonthly payday[-]; method of payment of wages.**

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



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

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

5 (1) Establish regular paydays less frequently than
6 semimonthly; provided that the employee shall be paid
7 in full at least once each calendar month on a
8 regularly established schedule; or

9 (2) Pay earned wages within fifteen days after the end of
10 each pay period.

11 (d) An employer may pay wages due to the employer's
12 employees by direct deposit to the employee's account at a
13 financial institution; provided that:

14 (1) The employee has voluntarily authorized, in writing or
15 via electronic signature, the direct deposit to the
16 account and financial institution of the employee's
17 choice;

18 (2) The deposits and accounts of the financial institution
19 selected are insured by the Federal Deposit Insurance
20 Corporation or any other comparable federal or state
21 agency;



- 1 (3) The employee may cancel the direct deposit at any time
2 with reasonable notice;
- 3 (4) The employer shall provide a pay statement as required
4 under section 388-7(4);
- 5 (5) No employee shall be required to pay any costs or fees
6 for the direct deposit of wages into the employee's
7 account; and
- 8 (6) No employee may be disciplined or otherwise penalized
9 for authorizing or refusing to authorize the direct
10 deposit of wages."

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

13 "[~~§~~§388-5.5~~§~~] **Payment of wages by check~~[-]~~ or electronic**
14 **transfer.** Whenever an employee receives the employee's wages
15 from the employee's employer in the form of a check or
16 electronic transfer for which insufficient amounts are available
17 in the bank account of the employer, the employer shall be
18 liable for any bank's special handling fee which the employee
19 may incur by reason of negotiating the check~~[-]~~ or the
20 electronic transfer."

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



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

2 provided that:

3 (1) Section 2 shall take effect with the payroll period

4 beginning on September 1, 2014; and

5 (2) Sections 4 and 5 shall take effect upon approval.



Report Title:

Pay Cards; Direct Deposit; Electronic Transfer; Methods of Wage Payment

Description:

Requires employers to meet certain requirements before paying wages to an employee using a pay card. Clarifies that employers may pay wages by direct deposit under certain conditions. Makes employers responsible for any fees incurred if an employer has insufficient funds in the employer's bank account for the electronic transfer. (HB1814 CD1)

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