
A BILL FOR AN ACT

RELATING TO PAYMENT OF WAGES.

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

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

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

13 "Pay card" means a prepaid card issued by a depository
14 institution authorized to accept deposits and whose deposits are
15 federally insured and used by an employee to access wages from a
16 pay card account and allows for purchases at multiple
17 unaffiliated merchants.



1 "Pay card account" means an account that is directly or
2 indirectly established through an employer and to which
3 transfers of the employee's wages, salary, or other compensation
4 are made."

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

7 "**§388-2 Semimonthly payday[-]; method of payment of wages.**

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



1 than once in every two years and each election shall be valid
2 for a period of two years.

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

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

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

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

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

16 (1) The employee has voluntarily authorized, in writing,
17 the direct deposit to the account and financial
18 institution of the employee's choice;

19 (2) The deposits and accounts of the financial institution
20 selected are insured by the Federal Deposit Insurance
21 Corporation or any other comparable federal or state
22 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 (e) An employer shall not pay wages due to the employer's
12 employees by use of a pay card onto which an employer, or an
13 entity on an employer's behalf, transfers or loads the
14 employee's wages unless the following conditions are met:

15 (1) The employer shall not mandate an employee's use of a
16 pay card; provided that:

17 (A) The employer does not require participation in a
18 pay card program as a condition for hire or
19 continual employment; and

20 (B) The employer offers the employee the use of:

21 (i) Direct deposit to a depository account of
22 the employee's choosing; or



1 (ii) A paper check;

2 (2) The employee has voluntarily authorized in writing,
3 without intimidation, coercion, or fear of discharge
4 or reprisal for refusal to accept the pay card or pay
5 card account, the payment of wages using a pay card,
6 which shall be indicated in a separate form that the
7 employee may keep consisting of a clear, conspicuous,
8 and complete itemized list of any fees assessed for
9 the use of a pay card in which the dollar amount of
10 each fee shall be stated; provided that the form shall
11 be provided to the employee in plain language in at
12 least ten-point font;

13 (3) The pay card issued to the employee shall be a prepaid
14 card issued by a depository institution authorized to
15 accept deposits and whose deposits are federally
16 insured;

17 (4) The employee shall have the ability to withdraw the
18 employee's full net wages at least three times per
19 payroll period without incurring any costs or fees;

20 (5) The employer shall assume or otherwise absorb any fees
21 or costs imposed by a financial institution for the
22 following services:



- 1 (A) The transfer or loading of the employee's net
2 wages into the account associated with the pay
3 card;
- 4 (B) Activation of the pay card; and
- 5 (C) Distribution and delivery of the initial pay
6 card;
- 7 (6) None of the employer's costs associated with the pay
8 card account may be passed on to its employees;
- 9 (7) The employer shall comply with all applicable
10 recordkeeping requirements under this chapter and
11 section 387-6;
- 12 (8) The employee may cancel the use of a pay card with
13 reasonable notice;
- 14 (9) The employer shall ensure that the following services
15 are available to the employee:
 - 16 (A) The employee's balance by telephone;
 - 17 (B) A readily accessible electronic history of the
18 employee's account transactions covering at least
19 sixty days preceding the date the employee
20 electronically accesses the account; and
 - 21 (C) Upon oral or written request by the employee, a
22 written history of the account transactions



1 covering at least sixty days prior to the
2 employee's request;

3 (10) The employer shall ensure that the employee is
4 provided liability protections against fraud
5 associated with the use of an employer-issued pay card
6 in accordance with Section 909 of the Electronic Fund
7 Transfer Act, title 15 United States Code section
8 1693g, and Regulation E, title 12 Code of Federal
9 Regulations section 1005.6;

10 (11) When offering an employee the option of receiving
11 wages using a pay card, the employer shall provide the
12 employee with notice of the following items in written
13 form:

14 (A) All of the employee's wage payment options;

15 (B) The terms and conditions relating to use of the
16 pay card, including a list of fees that may be
17 assessed by the card issuer;

18 (C) The methods available to employees for accessing
19 wages from the pay card without cost;

20 (D) The methods available to employees for checking
21 the balance in the pay card account without cost;



- 1 (E) A list of any fees assessed for use of the pay
2 card; and
- 3 (F) A statement as to whether third parties may
4 assess additional fees;
- 5 (12) The employee's pay card account shall be separate from
6 all other employees, for the sole and exclusive
7 benefit of the named employee, and not subject to the
8 claims of the employer's creditors;
- 9 (13) The funds on a pay card shall not expire, and the pay
10 card account may be closed for inactivity with
11 reasonable notice to the cardholder; provided that the
12 remaining funds shall be refunded to the employee at
13 no cost to the employee;
- 14 (14) The employer shall ensure that the pay card account
15 provides one free replacement pay card per year at no
16 cost to the employee before the pay card's expiration
17 date; provided that the replacement pay card may not
18 be issued if the pay card has been inactive for a
19 period of not less than twelve months or the employee
20 is no longer employed by the employer; and
- 21 (15) At least thirty days prior to any change to the pay
22 card program taking effect, the employer shall provide



1 the employee written notice in plain language in at
2 least ten-point font of any change to any of the terms
3 and conditions of the pay card account, including any
4 changes in the itemized list of fees."

5 SECTION 3. Section 388-5.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "~~§~~388-5.5~~§~~ **Payment of wages by check~~[-]~~ or electronic**
8 **transfer.** Whenever an employee receives the employee's wages
9 from the employee's employer in the form of a check or
10 electronic transfer for which insufficient amounts are available
11 in the bank account of the employer, the employer shall be
12 liable for any bank's special handling fee which the employee
13 may incur by reason of negotiating the check~~[-]~~ or the
14 electronic transfer."

15 SECTION 4. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect on July 1, 2112.



Report Title:

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

Description:

Clarifies that employers may pay wages by direct deposit under certain conditions. Allows employers to pay wages by pay cards under certain circumstances. Makes employers responsible for any fees incurred if an employer has insufficient funds in their bank account for the electronic transfer. Effective July 1, 2112. (SD1)

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