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Statement in Support of H.B. 6407 – An Act Allowing Employers to Pay Wages Using Payroll Cards

Labor and Public Employees Committee
February 24, 2011

Visa strongly supports H.B. 6407, which would allow employers in Connecticut to pay their employees using payroll cards. This legislation would provide benefits for employees and employers alike, and would enfranchise unbanked and under-banked Connecticut employees into the financial mainstream.

H.B. 6407 would require employers who wish to offer payroll cards to provide their employees with a written form asking them to choose payment by direct deposit or on a payroll card. Only those who elect payment using a payroll card or fail to return the election form would be paid using a payroll card. *H.B. 6407 would not allow employers to mandate the use of payroll cards.* The choice of payment method would remain in the hands of the employee.

Benefits for Unbanked Employees

While Connecticut law requires that employees get paid in full on payday, those who don't have a bank account or a credit union membership are typically forced to give up some of their pay to simply access the funds on their paycheck. A 2009 study by the Federal Deposit Insurance Corporation (FDIC) found that 19.1% of all Connecticut households are either unbanked (having no checking or savings account) or under-banked (having a checking or savings account, but still reliant on alternative financial services such as check cashing).

Without a bank account or credit union membership – or without a checking or savings balance large enough to cash the check – employees are forced to rely on check cashing services to access their wages. Check cashers can charge a fee of up to 2%, which is quite significant for most workers. Indeed, the costs of being unbanked or under-banked go far beyond fees to cash paper checks. Fees for money orders and express pay services, transportation costs to pay bills in person, and postage/express shipping costs all add to the costs of being unbanked or under-banked.

With a payroll card, unbanked individuals in Connecticut will for the first time have the ability to access 100% of their pay, on payday, with absolutely no charge or fee at literally any bank and almost every credit union in the State. The payroll card can function *exactly* like a paper paycheck and be cashed out to the penny, or it can be used for a combination of accessing cash, paying bills online, making point of sale purchases, and making online or telephone purchases.

Employee Protections

Unlike other prepaid products, payroll cards are subject to significant regulation. Only payroll cards have been singled out by the Federal Reserve Board as being subject to Regulation E, which includes many important consumer protections. Regulation E requires dispute resolution procedures to protect cardholders, and requires that all terms, conditions and fees be clearly disclosed, permitting

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payroll cardholders to easily understand how to use the card to their best advantage. Although overdrafts on payroll cards are uncommon, recent revisions to Regulation E prohibit fees for overdrafts without prior consent.

Prior to the issuance of a payroll card, Regulation E requires that employers provide their employees with written notice of the terms and conditions of the card, any fees that may be assessed by the card issuer, and notice that other fees may be assessed by third parties (e.g., out of network ATM providers).

And while Regulation E establishes that if a payroll card is used fraudulently, the cardholder is only liable for up to $50 in fraud losses, network-branded payroll cards offer zero liability. If a network-branded payroll card is lost, stolen or used without authorization, the employee is protected up to 100% of the loss.

Benefits for Employers

Electronic wage payment quite simply saves employers money. Direct deposit and payroll cards eliminate the cost of issuing, processing and distributing paper paychecks, as well as the costs associated with lost and stolen paychecks. Employers can save anywhere from $2.87 to $3.15 per payment using electronic payment methods instead of paper paychecks, according to NACHA.

Direct deposit and payroll cards also provide employers with a reliable means of complying with strict wage payment statutes even when unforeseen obstacles arise. For example, inclement weather, unexpected employment terminations, natural disasters and similar contingencies often make the timely payment of wages using paper paychecks difficult, if not impossible.

The Recognized Value of Electronic Payments

As one of the leaders in developing digital currency and the great benefits that accrue to everyone involved as a result, Visa applauds the Committee for considering this important legislation. The vast majority of states, including Connecticut, distribute at least some government benefits electronically. A growing number of states, such as Oregon and Nebraska, now pay wages to their own employees using direct deposit and payroll cards. Even the federal government is going paperless, with plans to issue federal benefits, including Social Security, Supplemental Security Income and Veteran's benefits, through either direct deposit or prepaid cards (similar to payroll cards).

The State of Connecticut already recognizes the value of electronic payments and uses prepaid debit cards to deliver a variety of benefits including unemployment compensation, child support, food stamps and Temporary Assistance to Needy Families (TANF). Yet, Connecticut remains one of only four states that do not allow employers to use this beneficial payment method to compensate their employees.

A statutory amendment, as proposed by H.B. 6407, is necessary to align the wage payment statute with modern wage payment practices. As such, Visa respectfully urges the Committee to approve this bill.

FREQUENTLY ASKED QUESTIONS
REGARDING PAYROLL CARD LEGISLATION

1. What is a payroll card?

A payroll card is a reloadable prepaid (i.e., stored value) card issued to an employee through a national or regional bank, credit union, or savings and loan association ***on behalf of an employer***. Payroll cards also are referred to as "paycards."

Each pay day, the payroll card is electronically loaded with the full amount of the employee's net pay. The employee can then use the card to withdraw cash from an ATM or bank teller, make point of sale purchases, receive cash back from point of sale transactions, make purchases by mail, phone or internet and pay bills online. Some programs offer additional features as well.

Payroll cards are intended to compliment an employer's direct deposit program. By giving employees the choice between direct deposit and payroll cards, all employees can enjoy the benefits of electronic wage payment. These benefits include increased security and convenience, prompt access to wages regardless of location and the potential for significant cost savings.

2. Why is it important to implement legislation addressing payroll cards?

Payroll cards provide a host of benefits to employers and employees alike. Unfortunately, however, the wage payment statutes in most states were written before modern wage payment technologies were envisioned. Accordingly, many employers who are eager to implement an electronic wage payment program utilizing payroll cards are hesitant to do so in the absence of clear guidance as to their lawfulness under state law.

At the same time, many employees who do not have bank accounts would like to participate in direct deposit, but are unable to do so. An increasing number of these employees are purchasing general purpose reloadable prepaid cards from retail outlets and asking their employers to direct-deposit their wages into the general purpose prepaid card account. Employers cannot distinguish these accounts from conventional bank accounts. Reloadable prepaid cards available from retailers generally have significant fees that do not apply to employer-sponsored payroll cards, such as initial purchase costs and monthly maintenance fees. To stop this trend and safeguard employee wages, it is imperative that state law expressly authorize employers to implement beneficial payroll card programs on reasonable terms.

3. Does an employee need a bank account to receive wages on a payroll card?

No. Employees do not need a personal bank account to receive their wages on a payroll card. In fact, one of the primary advantages of payroll cards is that they allow employees without checking or savings accounts to enjoy the benefits of electronic wage payment.

4. How does a payroll card account differ from a checking account?

Payroll cards can be used wherever debit cards are accepted, and in many ways are similar to debit cards tied to demand deposit accounts (DDAs or "checking accounts"). The main difference between checking accounts and payroll card accounts is that the employer makes the payroll card account available to the employee. No credit check is required. With checking accounts, the employee establishes the relationship with the bank him- or herself and undergoes a credit check to qualify for the account.

5. Who owns the funds in the payroll card account?

Wages are transferred to the payroll card account immediately upon wage payment. At that point, the funds belong to the employee. The employer has no reversionary interest in the funds.

6. Do employees earn interest on wages left in the payroll card account?

Employees generally do not earn interest on funds sitting in the payroll card account. Some programs do offer a "savings purse" feature which enables employees to move money into and out of an account which earns interest on the balance.

7. Will employees be given the option of receiving a paper paycheck?

Whether employees are provided with an option of receiving a paper paycheck depends on the particular payroll card program and applicable state law. Many employers would like to implement a strictly electronic wage payment program giving employees the choice between direct deposit and payroll cards, without also offering a paper paycheck. One of the benefits of such a program is that it allows employers to implement the processes and procedures necessary to ensure that all employees have access to their wages during periods of severe weather and natural disasters. So long as one employee continues to receive a paper paycheck, the employer will have difficulty delivering all wages in a timely manner when unexpected contingencies arise.

Other reasons for allowing strictly electronic wage payment include:

- Allowing an employer to reduce its carbon footprint,
- Facilitating the employees' entry into beneficial and secure mainstream financial services,
- The potential for significant cost savings that can then be reinvested into the workforce. If all employees participate, the employer is able to save a greater amount on payroll processing.

8. Will employees be given the option of having their wages directly deposited into their personal bank accounts?

Yes. Payroll cards are meant to compliment an employer's direct deposit program. Employees who do not enroll in direct deposit will be paid on a payroll card. Payroll cards are meant to replace paper paychecks, not direct deposit.

9. What are the advantages of electronic wage payment over paper paychecks?

There are several reasons why electronic wage payment is more advantageous to employees than paper paychecks. Employees benefit from immediate access to their wages on payday even when they are away from the workplace (e.g., working remotely, on vacation, out ill, etc.). Electronic wage payment also is more convenient. Employees do not need to wait for their paycheck to be delivered or stand in line to deposit or cash their paycheck. Employees without bank accounts, who are likely to be the primary users of payroll cards, often rely on expensive check cashing services to access their wages. Once they have their pay in cash, they then have to purchase money orders to pay their monthly bills such as their rent, utilities and cellular phone bill. In contrast, payroll cards ensure that employee have free access to their full wages at no cost at least once each pay period and enable them to avoid costly check cashing services.

Payroll cards also provide increased safety as employees no longer need to carry around large amounts of cash. Employees can use the card to withdraw cash from an ATM or bank teller, make point of sale purchases, receive cash back from point of sale transactions, make purchases by mail, phone or internet and pay bills online. Many of these transactions are difficult, if not impossible, in a cash-based world.

Payroll cards also are advantageous to employers. With payroll cards, employers have a more reliable means of ensuring that all employees receive their pay on time every payday. The ability to deliver wages to employees during extreme weather conditions and natural disasters is greatly facilitated by electronic wage payment.

Most employers also enjoy significant cost savings from electronic wage payment. The cost of printing and distributing paychecks, replacing lost and stolen checks, and bank reconciliation are eliminated. In light of these benefits, it is not surprising that interest in and use of payroll cards continues to increase.[1]

10. Do other states permit purely electronic pay?

Yes. In fact, the laws and/or administrative enforcement positions in more than half of the states allow employers to use electronic wage payment methods as the exclusive means of compensating all or some of their employees.[2]

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[1] According to the Mercator Advisory Group, Inc., payroll card loads have grown at a Compound Annual Growth Rate (CAGR) of 34.6% since 2004. Mercator Advisory Group, *Payroll Cards: 100% Electronic Payments 80% of the Time, Crossing the Market Finish Line* (January 2009).

[2] The laws and/or enforcement positions in the following states expressly permit, or can be interpreted as permitting purely electronic wage payment: Alabama, Colorado, Delaware, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maine, Michigan, Missouri, Mississippi, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington and Wisconsin. In addition, employer may mandate the choice between direct deposit for some, but not all employees in Florida, Iowa and Virginia.

11. Are employees charged any fees for using their payroll card?

A common misconception regarding payroll cards is that employees incur significant fees when accessing their wages from their payroll card. This simply is not the case. The wage and hour laws require that employees have access to their full wages on payday without discount. This generally means that employees must be able to access all of their wages at least once each pay period without cost (i.e., employees must be able to "cash out" their payroll cards like they would a paper paycheck). The payment without discount requirement also means that some fees should not be charged to the employee. For example, an employee should not be required to purchase the payroll card (although fees to replace a card may be permissible) or be charged a fee to load his or her pay onto the card. In this way, payroll cards differ from general purpose reloadable prepaid cards that are available for purchase at retail locations and are not subject to the state wage and hour law. Fees for discretionary services, such as multiple ATM withdrawals, are appropriate on payroll cards, however.

Most payroll card providers offer employees several ways to access their wages each pay period including one or more ATM withdrawals, over-the-counter bank teller transactions and purchases with a cash-back option. Indeed, employees with cards bearing the Visa, MasterCard, or Discover logo can walk into any financial institution that issues their brand of card and receive their full wages without fees from the bank teller at least once each pay period.

Thus, one of the primary benefits of payroll cards is that they provide employees without bank accounts with a convenient means of accessing their full wages. However, just like banked employees who decide to use a check-cashing service to cash their paycheck, or employees with direct deposit who decide to access wages from an out of network ATM, employees with payroll cards may incur fees if they fail to take advantage of the many access methods that are offered free of charge. These fees should never come as a surprise to employees given the disclosure requirements of Regulation E and similar state statutes.

12. How do employees check the available balance on their payroll cards?

Employees who receive their wages on a payroll card are able to check their account balance in many different ways. For example, they may call a toll-free customer service number, access the information over a secure internet or intranet, and perform balance inquiries at an ATM. Some programs also offer text and/or e-mail alerts and additional means of helping employees keep track of their account balance. Fees vary from program to program, but there is always a way for an employee to check his or her balance for free.

13. Can an employee spend more money than is on this or her payroll card? If so, are there fees for such overdrafts?

Most payroll card transactions require pre-authorization to confirm that funds are available. Thus, in theory, an employee should only be able to spend the funds that have been loaded onto his or her payroll card. In practice, however, there are situations where delays in transaction processing could result in an overdraft if the employee is not monitoring his or her spending. For example, some retailers still make card imprints or obtain payment authorization on paper for later processing. A payroll card can be overdrawn if the employee makes a subsequent purchase exceeding his or her balance before the offline transaction is processed.

The above situational exceptions are beyond the control of the card issuer or payroll card provider. They drive home the importance of educating employees on the proper use of their payroll cards and the need to emphasize to employees that they must take responsibility for always knowing the available balance on their payroll card.

Finally, recent revisions to Regulation E prohibit fees for overdrafts for one-time debit transactions or ATM transactions without the consumer's prior consent. Accordingly, any overdraft protection program will need to receive the specific consent of the employee before it can be implemented.

14. Do employees receive regular transaction histories?

Employees who receive their wages on a payroll card receive two types of statements. First, in accordance with Federal Reserve Regulation E, employees are provided a periodic activity statement from the card issuer showing all transactions including payroll deposits, ATM transactions and purchases. The card issuer, not the employer, provides this statement, which ensures that private information including the employee's purchasing activity remains confidential. These statements generally are provided free of charge.

Employees also receive a statement of earnings and deductions from the employer (or "paystub") each pay period, as required by the wage and hour laws in most states.

15. What happens if an employee loses a payroll card or it is stolen? Is there a cost for a replacement card?

An employee who loses his or her payroll card should call customer service and report the card as lost or stolen. The card will be de-activated and a new card issued with the full remaining card value. The exact procedures will vary depending on the particular payroll card program.

Regulation E limits cardholder liability in the event that a lost or stolen card is fraudulently used so long as the employee follows certain notice requirements. Moreover, if a lost or stolen card is branded, the brand's zero liability policy also will shield the employee from losses arising from many fraudulent uses.

Fees for card replacement are subject to negotiation between the employer and the payroll card provider, and vary from program to program.

16. How is an employee's privacy protected? Can an employer see how its employees use their payroll cards?

An employer does not have access to the transactional information about how employees spend their wages. The Gramm-Leach-Bliley Act (GLBA) requires "financial institutions" to protect the security and confidentiality of their customers' nonpublic personal information. "Financial institution" is broadly defined to include any entity that is significantly engaged in financial activities. 15 U.S.C. § 6809(3). An example of "financial activities" is "the storage, processing and transmission of financial, banking or economic data." 12 C.F.R. § 225.28(b)(4) (incorporated by reference into 12 U.S.C. § 1843(k)(4)).

All payroll card programs are issued through a financial institution. Payroll card providers that are not themselves financial institutions still are agents of the financial institutions with whom they have contracted. As such, they will be required in their contract with the financial institution to comply with the GLBA. The GLBA and its implementing regulations also require financial institutions to take reasonable steps to screen and select service providers.

17. Do credit unions offer payroll cards?

Yes. There is nothing that would prevent credit unions from offering payroll cards. In fact, in 2003, the National Credit Union Administration issued an opinion making clear that federal credit unions may offer payroll cards to member employers who wish to use the cards to distribute payroll cards to nonmember employees. (OGC Op. 09-0908 (September 10, 2003)). Today, many credit unions offer payroll cards.

18. Do financial institutions have to "cash out" cards issued by other financial institutions? Won't this disadvantage small community banks?

All of the major payroll card brands (Visa, MasterCard and Discover) require financial institutions enrolled in their network to provide cash off any card carrying their brand down to the penny at no fee even if the card was not issued by their financial institution. This requirement is not a burden on member institutions. To the contrary, the financial institution that performs the cash transaction is compensated for its services by the card issuer.

19. Are the funds loaded onto a payroll card FDIC-insured?

Yes. In November 2008, the FDIC issued an opinion letter making clear that the funds underlying a payroll card are FDIC insured. The FDIC concluded that because "the funds underlying stored value cards ... are no different, in substance, than the funds underlying traditional access mechanisms such as checks, official checks, traveler's checks and money orders," the funds will be treated as insurable deposits so long as they are placed at an insured depository institution.[3]

The FDIC also opined that the holder of the account (i.e., the employee) will be treated as the owner of the funds if the FDIC's standard requirements for pass through insurance are satisfied. The pass through rules require that: (1) the agency or custodial relationship be disclosed in the account records of the insured depository institution, (2) the identities and interests of the actual owners be disclosed in the records of the depository institution or the records maintained by the custodian or other party, and (3) the deposits must actually be owned by the named owners and

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[3] *See*, General Counsel Opinion Number 8 (GC8), 73 Fed. Reg. No. 220, p. 67156 (November 13, 2008). GC No. 8 is available at http://edocket.access.gpo.gov/2008/pdf/E8-26867.pdf.

not by the custodian. If these requirements are satisfied, the employee will be the insured owner of the funds. If not, the named accountholder will be treated as the owner.

20. Are there limits on where the payroll card can be used?

Branded payroll cards can be used anywhere that the particular brand of card (i.e., Visa, MasterCard or Discover) is accepted. This includes millions of stores, restaurants and other businesses worldwide. Branded payroll cards also can be used to shop and pay bills over the telephone or online.

21. What consumer protections exist for payroll cards?

Unlike other prepaid cards, payroll cards are subject to Federal Reserve Regulation E. Regulation E implements the federal Electronic Fund Transfer Act and includes many important consumer protections.

For example, Regulation E limits cardholder liability when a lost or stolen card is used fraudulently so long as the cardholder reports the lost or stolen card within specified periods after learning of the loss.[4] It also requires that dispute resolution procedures be available to cardholders and that all terms, conditions and fees be clearly disclosed. This permits payroll cardholders to easily understand how to use the card to their best advantage. In addition, although overdrafts on payroll cards are uncommon (see question 13, above), recent revisions to Regulation E prohibit fees for overdrafts without prior consent.

Branded payroll cards provide the additional consumer protections in accordance with the established policies of the brand they carry. These protections include "zero liability" for lost or stolen cards used for unauthorized purchases, other purchase protections, and dispute rights.

22. Do employers benefit from the "float" on the payroll card balance?

Employers do not benefit from float. Just like direct deposit, an employer has no reversionary interest in funds paid to an employee using a payroll card. Float, interchange revenue and the limited fees permitted are used by payroll card program providers to offset the cost of managing their program. These fees include customer service expenses, the cost of providing consumer protections, and the cost of maintaining the infrastructure supporting the payroll card program.

In contrast, when employers are paid by paper paycheck, the employer benefits from float until its employees cash their paychecks. Rather than benefiting from float, employers lose this benefit when they implement electronic wage payment methods. However, the cost savings of eliminating paper paychecks more than outweighs the loss of float for employers.

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[4] Employees with branded cards also are protected against most fraudulent uses by the brand's zero cardholder liability policy.

23. Who is responsible for escheatment of funds left on a payroll card?

Once funds are transmitted to the employee's payroll card, they are considered paid to the employee. The financial institution holding the account is responsible for escheatment of funds left on the card, not the employer.

24. Are the funds on a payroll card subject to garnishment?

Garnishment refers to withholding a portion of an employee's wages, before it is paid to the employee, for the purpose of satisfying a debt. Garnishments only are permissible in accordance with a court order. Method of wage payment does not impact whether or not an employee's wages are subject to garnishment. State and federal law regulate the amount of money that may be garnished from an individual's wages and should be consulted for guidance.

After wages are paid, a creditor may seek to "levy" funds in the employee's bank account to pay a debt. A payroll card account is subject to levy to the same extent, and pursuant to the same procedures, as an employee's personal bank account.

25. Can an employee dispute the charges that are assessed on the card?

Yes, the federal Electronic Funds Transfer Act and Regulation E prescribe a comprehensive dispute resolution process. The employee must notify the financial institution of a suspected error within a specified time period at which point the institution is required to promptly investigate the matter and determine whether an error occurred. If it did, the financial institution must correct the error within one business day of the determination. If the financial institution determines that an error did not occur, it must provide the employee with a written explanation of its findings, including the employee's right to request copies of the document on which the institution relied in making its determination.

In addition, the payment brands have developed additional dispute resolution procedures that apply to payroll cards bearing their logo.