A woman with brown hair, wearing a bright yellow knit beanie and a matching yellow duffle coat with a fur-lined hood and large dark buttons, is smiling as she uses an ATM. Her hands are on the keypad. The background is a blurred indoor setting, possibly a bank or office.

The cents and sensibility of direct deposit and pay cards

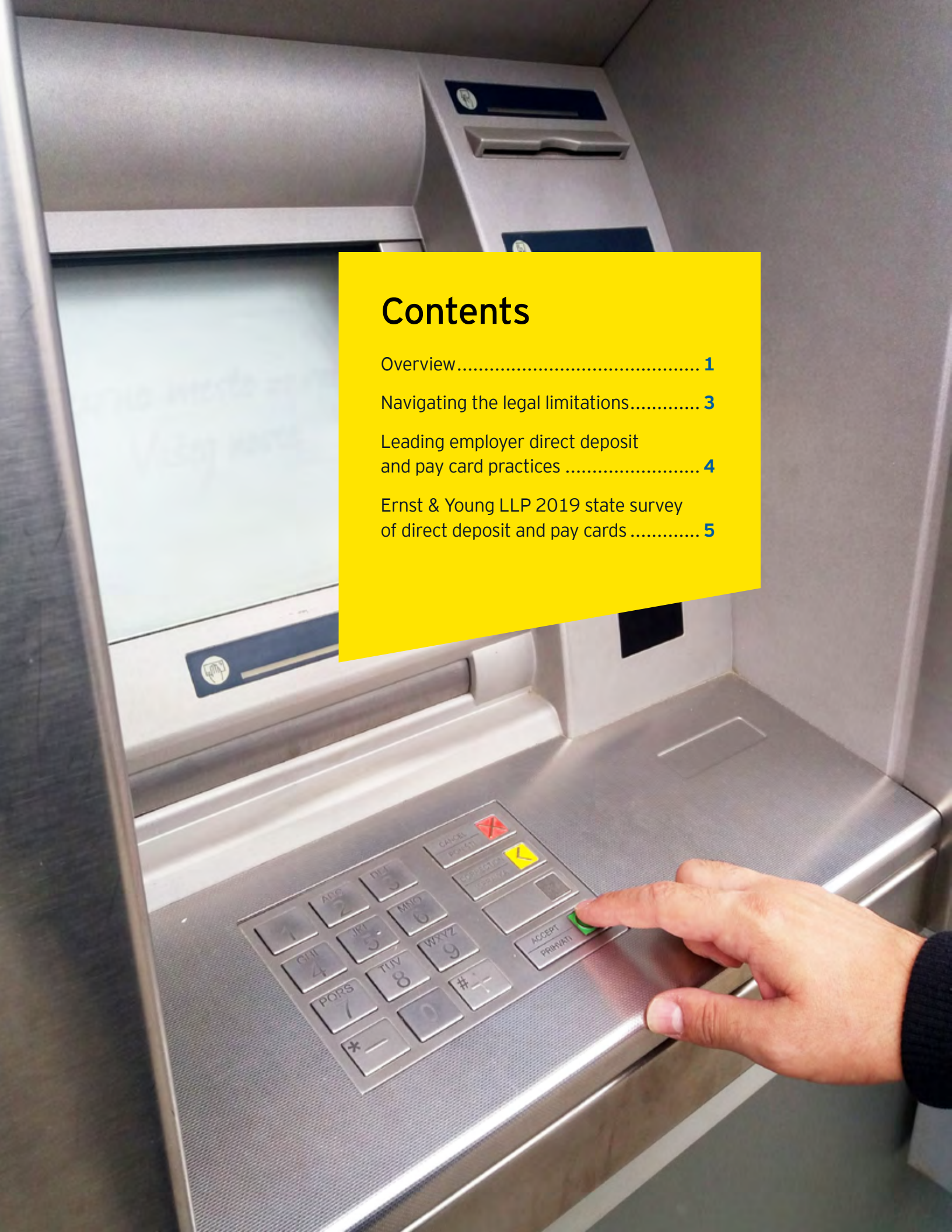
And the state rules that govern

The EY logo consists of the letters 'EY' in a bold, black, sans-serif font. A yellow chevron shape is positioned above the 'Y'.

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The cents and sensibility of direct deposit and pay cards

by Debera J. Salam, Ernst & Young LLP



From employee wages to federal benefits such as Social Security, direct deposit – including pay cards – is replacing paper checks, with payers and payees both benefiting from the transition. Payers enjoy a lower risk of payment fraud and a reduction in administrative burden caused by lost and outstanding checks. Payees can better predict when deposits will be available in their accounts while saving time needed to cash checks. Everyone in the direct deposit system wins by reducing paper clutter and its environmental footprint.

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Financial institutions and employers play a vital role in encouraging usage and facilitating enrollment in direct deposit via ACH.

George Barany
America Saves

According to the [National Automated Clearing House Association \(NACHA\)](#), more than 80% of US workers receive their pay via direct deposit and 87% of employees are highly satisfied with this decision. Eight of 10 employees receiving direct deposit is a significant reduction in paper transactions, but [NACHA](#) believes there is more work to do. Its focus is on what businesses can do to convince the remaining 20% of the workforce to give up paper checks.

“Financial institutions and employers play a vital role in encouraging usage and facilitating enrollment in direct deposit via ACH,” said George Barany, director of financial education for America Saves, a national campaign managed by the Consumer Federation of America. “We strongly encourage employers across industry sectors to engage with their employees, and for banks and credit unions to work with their consumer customers and their large and small business customers to better inform them about the value of direct deposit via ACH.”

One barrier to the growth in direct deposit was the population of employees unable to obtain a checking account and no choice but to refuse direct deposit. Without another option, these employees often were forced to incur substantial check-cashing fees.

The cents and sensibility of direct deposit and pay cards

Continued

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Most users of payroll card products are not burdened by excessive fees but there remains a significant portion of users who are burdened in this way.

Making Payroll Cards Work for Employees
Center for Financial Services Innovation

Pay cards (also known as prepaid debit cards) attempt to bridge this direct deposit gap by giving employees the ability to accept funds via a prepaid debit card (rather than through a personal bank or other financial account); however, according to a [2018 report](#) by the Center for Financial Services Innovation (CFSI), payroll cards are now popular with banked and unbanked employees. Of the 684 pay card users surveyed, 84% reported having a checking account, 73% a savings account.

Theoretically, pay cards give employees a pathway to the conveniences of direct deposit and a reprieve from substantial check-cashing fees; however, this is not necessarily the case. CFSI states, “most users of payroll card products are not burdened by excessive fees but there remains a significant portion of users who are burdened in this way.”

[Visa](#), one of the nation’s largest pay card providers, charges \$2.50 plus ATM-owner fees to withdraw funds from the debit card account. By comparison, check-cashing fees range from 1% to 5% of net pay. For a minimum wage part-time worker netting \$200 per week and paying a check-cashing fee of just 1%, there is little cost difference between the check-cashing fee and the initial fee to withdraw funds from the pay card.

However, in many states, pay card employees may be getting a better deal than those still cashing paper checks because issuers are required to give pay card holders the ability to withdraw funds without incurring a fee (e.g., the usual monthly maintenance fee that applies to debit cards is prohibited). For example, an Arizona statute has a specific provision stating that “any pay card plan adopted by the employer shall entitle the employee to one withdrawal for each deposit, free of any service charge to the employee.” (A.R.S. §23-351.) The objective of this law is to give employees the ability to draw cash from the prepaid debit card account in much the same way as they would exchange paper checks for cash (minus the check-cashing fee).

The cost of using a pay card can vary by employee; for instance, if employees leave their wage payment in the pay card account and pay an ATM fee for each purchase/withdrawal, the monthly cost could be significant. This is why a number of states (e.g., Colorado, Hawaii, Minnesota and Tennessee) require that employees be given one free withdrawal each payroll period.

Additionally, numerous states prohibit a restriction on the amount that can be withdrawn at one time from the pay card account (e.g., Colorado, Hawaii, Minnesota and Tennessee), enabling employees to withdraw their wages from the pay card in one lump sum each payroll period.

Navigating the legal limitations

Although electronic banking is the trend, employers need to look before they leap. As pointed out by the [Society for Human Resource Management](#) (SHRM), when it comes to direct deposit and pay cards, federal and state regulators “are living in the last century,” imposing restrictive laws and regulations that must be taken into account when adopting a workplace policy for direct deposit or pay cards.

Of primary consideration is the requirement for employee choice. More than half of the states require that employees consent to direct deposit, and, specifically, to the pay card arrangement.

Because of the concern for the potential financial burden they place on low-wage earners, numerous restrictions can apply to pay cards. The [Consumer Financial Protection Bureau](#) states that under federal law, employers may not require that employees accept a pay card, and, effective April 1, 2019, employees who receive a pay card must receive certain disclosures that describe the fees for the card and a cardholder agreement that sets out the additional terms and conditions of the payroll card program.

A number of [bank fees](#) can apply to the pay card, triggering requirements at the state level about those that may not be passed along to employees. Kentucky, for instance, requires that there be no activation fee and one free withdrawal up to full amount per pay period and in Texas, bank fees cannot bring the employee below the federal minimum wage.

While pay stubs are not required under [federal law](#), most states do require them with some going so far as to require that employees given electronic pay stubs also be able to print them without cost (e.g., Utah).

The consumer advocate movement to limit pay card bank fees has sparked increased focus by lawmakers and regulators on employer practices. In this current climate, it is critically important that employers confirm their compliance with the federal and state laws governing direct deposit and pay cards and consider leading practices, such as those below, that foster employee and community trust.

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Some businesses may prefer paying workers with payroll debit cards rather than by check or direct deposit, but employers should be aware of laws that regulate the use of payroll cards and not make them mandatory.

[Lisa Nagele-Piazza, J.D., SHRM-SCP](#)
Society for Human Resource Management



The cents and sensibility of direct deposit and pay cards

Continued



Leading employer direct deposit and pay card practices

- ▶ **Comply with the law**

State law may regulate not only that employees consent to electronic pay, but that they incur no additional fees or be subject to restrictions in gaining access to their cash. Disclosures concerning fees may also be required and available in different languages (e.g., Minnesota).
- ▶ **Offer options**

Employees should be given the option of direct deposit or pay card, and employers should consider when paper checks might also be an appropriate option (see the [U.S. Department of Labor's Field Operations Handbook](#), 30c).
- ▶ **Don't be pushy**

Pressuring employees into accepting direct deposit or pay cards could be a violation of the law. For example, Michigan requires not only that employees participate voluntarily, but that their consent is obtained without intimidation, coercion or fear of discharge or reprisal. (*MCL §408.476(2).*)
- ▶ **Carefully choose the card issuer**

In choosing a pay card provider, consider using "brands" that employees recognize and trust and that offer them convenient locations from which to make cash withdrawals. Consider the importance of having financial independence of the pay card provider.
- ▶ **Be mindful of card terms and conditions**

Employees should be able to withdraw all of their pay once per payday without fees or restrictions and be given free and convenient access to their account information. Employers should also be wary of pay card features, such as overdraft protection, that present financial risk to their employees.
- ▶ **Provide information to employees**

Information concerning the pay card, including how and where to withdraw cash, how to make purchases, and any fees and limitations, should be available to employees in a convenient forum, such as a website where passwords are not required. Where applicable, the information should be available in foreign languages.
- ▶ **Pay close attention to the pay stub requirements**

In the zeal to go paperless, employers need to be mindful of state laws and regulations that may require employees be given of the option of receiving a paper pay stub or the ability to print a paper statement at the workplace at no cost to them.
- ▶ **Make changing payment methods easy for employees**

It is important that employees are able to quickly change their payment method. Being responsive and flexible to employee change requests is not only good for the workplace, it may be required under state law.

See highlights of our survey on the state laws governing direct deposit and pay cards starting on page 5.



Ernst & Young LLP 2019 state survey of direct deposit and pay cards

| State | Direct deposit: Employee's voluntary consent specifically required | Pay cards: Employee's voluntary consent specifically required | Format of pay stubs: paper vs. electronic |
|-------------|--|---|--|
| Alabama | No | No administrative position available | No provision |
| Alaska | Yes | Yes | Paper or electronic |
| Arizona | No (conditions apply) | No (conditions apply) | Paper or electronic |
| Arkansas | Yes | Yes | No provision |
| California | Yes | Yes | Paper or electronic |
| Colorado | Yes | Yes | No provision |
| Connecticut | Yes | Yes | Paper or electronic (with the employee's consent), but if electronic the employer must provide a means for each employee to securely, privately and conveniently access and print such record. The employer must incorporate reasonable safeguards to protect the confidentiality of an employee's personal information. |

The cents and sensibility of direct deposit and pay cards

Continued

| State | Direct deposit: Employee's voluntary consent specifically required | Pay cards: Employee's voluntary consent specifically required | Format of pay stubs: paper vs. electronic |
|----------------------|--|--|--|
| Delaware | Yes | No (if no fee is involved and employee is informed at time of hire) | Paper or electronic. The electronic statement must be in a form capable of being retained by the employee. The employee may request that the statement be provided on paper. |
| District of Columbia | Yes, (no for DC public employees) | Yes | Written statement. No provision for electronic statement. |
| Florida | Yes | Yes | No provision |
| Georgia | Yes | No (employees must be given option to "opt out") | No provision |
| Hawaii | Yes | Yes | Paper and electronic. Upon the employee's written consent, the employer may provide an electronic record that may be electronically accessed by the employee. |
| Idaho | Yes | Yes | No provision |
| Illinois | Yes | Yes | Paper. No electronic pay stub provision. |
| Indiana | No | No | Paper or electronic |
| Iowa | No | Yes | Paper and electronic. If electronic statement, the employee must be given free and unrestricted access to a printer to print the employee's statement of earnings. The employee may choose a paper statement over an electronic one. |
| Kansas | No (conditions apply) | No (conditions apply) | Paper. No electronic pay stub provision. |
| Kentucky | No | No (no activation fee and one free withdrawal up to full amount per pay) | Paper or electronic. If an employer provides an electronic statement, then the employer shall provide access to a computer and printer for review and printing by the employee. |

| State | Direct deposit: Employee's voluntary consent specifically required | Pay cards: Employee's voluntary consent specifically required | Format of pay stubs: paper vs. electronic |
|---------------|--|---|--|
| Louisiana | No | No administrative position available | No provision |
| Maine | No, if no fee is involved | No (if no fee is involved) | Paper or electronic. If provided in an electronic format the employer shall provide a method by which the employee may have ready access to the information and print it without cost to the employee. |
| Maryland | Yes (no for state government employees) | Yes | Not specified |
| Massachusetts | No | No (conditions apply) | Paper or electronic. Paystubs may be given out electronically as long as the employer provides a way for the worker to print the information at no cost. |
| Michigan | No (following 30-day notice to employees of mandatory requirement) | No (following 30-day notice to employees of mandatory requirement) | Paper or electronic. Electronic pay or wage statements are allowed provided the employee has the ability to print out the statement at the time the wages are paid. This manner of obtaining statements must be consistent throughout the company. |
| Minnesota | No (employee may opt out in writing) | Yes (employer must register with the Department) | Paper or electronic. Employer must provide employee access to an employer-owned computer during an employee's regular working hours to review and print. electronic earnings statements. Employee can request a paper statement. |
| Mississippi | No administrative position available | No administrative position available | No provision |
| Missouri | No | No | No provision |

The cents and sensibility of direct deposit and pay cards

Continued

| State | Direct deposit: Employee's voluntary consent specifically required | Pay cards: Employee's voluntary consent specifically required | Format of pay stubs: paper vs. electronic |
|----------------|--|---|---|
| Montana | Yes | Yes | Not specified |
| Nebraska | No | No (one free withdrawal per pay day) | Paper or electronic. It is acceptable for an employer to provide each employee access to view an electronic statement of the employee's earnings, so long as the employee has free and unrestricted access to a printer to print the statement if the employee chooses. |
| Nevada | Yes | Yes | Not specified |
| New Hampshire | Yes | Yes | Not specified |
| New Jersey | Yes (no for state, county and municipal employees) | Yes | Not specified |
| New Mexico | Yes (no for state employees) | No (if no fee is ever involved and wages are paid in full) | Not specified |
| New York | Yes (no for salaried employees paid \$900 or more per week) | Yes | Paper and electronic. Electronic pay stubs are allowed provided the computers from which the employees access the statements can print such statements without undue delay or effort and while on company time. |
| North Carolina | No (if no fee to employee is involved) | No (if no fee to employee is involved) | Paper or electronic. If electronic, transmission must be capable of being printed out as a paper copy by the employee. |
| North Dakota | No | Yes | Paper or electronic. Electronic statement allowed so long as the employee has access and the ability to print the information. |

| State | Direct deposit: Employee's voluntary consent specifically required | Pay cards: Employee's voluntary consent specifically required | Format of pay stubs: paper vs. electronic |
|----------------|---|--|--|
| Ohio | No | No | No provision |
| Oklahoma | No | Yes | Not specified |
| Oregon | No (but employee may request in writing to be paid by check) | Yes | Paper or electronic. The employer may provide the statement to the employee in electronic form if the statement contains the required information; the employee expressly agrees to receive the statement in electronic form; and the employee has the ability to print or store the statement at the time of receipt. |
| Pennsylvania | Yes | Yes (effective May 5, 2017, specific provisions apply) | Not specified |
| Rhode Island | Yes | Yes (specific conditions apply) | Not specified |
| South Carolina | No | No (administrative position, nothing in law or regulations to support) | Not specified |
| South Dakota | No | No | No provision |
| Tennessee | No | No (conditions apply) | No provision |
| Texas | No (following 60-day notice to employees of mandatory requirement and if employee already has a bank account) | Yes (employee must in writing approve of any fees and fees cannot take wages below minimum wage) | Paper or electronic |
| Utah | No (under certain circumstances) | No (if no fee is involved) | Paper or electronic. If electronic, the employee must be able to easily and immediately access the information and print a paper copy without cost. |
| Vermont | Yes | Yes | Not specified |

The cents and sensibility of direct deposit and pay cards

Continued

| State | Direct deposit: Employee's voluntary consent specifically required | Pay cards: Employee's voluntary consent specifically required | Format of pay stubs: paper vs. electronic |
|---------------|--|---|--|
| Virginia | No (conditions apply) | No (for new hires, conditions apply) | Not specified |
| Washington | No (if no fee involved) | No (if no fee involved) | Paper or electronic. If electronic, each employee must have access to receive and copy it on the payday. If an employee cannot receive an electronic pay statement at work or at home on the established payday, the employer must provide a written pay statement to the employee on each pay date. |
| West Virginia | Yes | Yes | Not specified |
| Wisconsin | No (if no fee involved) | No (if no fee involved) | Not specified |
| Wyoming | Yes | Yes | Not specified |



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