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Division of Labor Standards

## Direct Deposit of Wages in a Bank or Financial Institution Guidelines

The New York State Labor Law provides as follows:

### **Section 192. Cash Payment of Wages.**

1. No employer shall without the advance written consent of any employee directly pay or deposit the net wage or salary of such employee in a bank or other financial institution.
2. This section shall not apply to any person employed in a bona fide executive, administrative, or professional capacity whose earnings are in excess of nine hundred dollars a week, nor to employees working on a farm not connected with a factory.

There is no requirement that an employer obtain a permit from the Department of Labor before instituting a direct deposit of wages system. However, for compliance with provisions of the Labor Law governing payment of wages, an employer should observe the following guidelines relating to direct deposit of wages in a bank or financial institution. In formulating these guidelines, the Department has applied the principle that when an employee is paid wages by direct deposit, the employee should remain in substantially as good a position as though receiving wages in cash.

### **Advance Written Consent**

Advance written consent of the employee should be kept on file by the employer. The consent form should contain the name and location of the bank or financial institution and a description of the account. The consent of the employee must be voluntary and an employer shall not institute an arrangement of direct deposit of wages in a bank or financial institution in the face of employee objection. The consent must be revocable at will. Employees who do not consent to a direct deposit arrangement must receive wages in cash or by check.

### **Expenses to an Employee**

An employee shall not be obliged to incur expense in the arrangement whereby the employee's wages or salary are directly deposited in a bank or financial institution or in the withdrawal of such wages or salary from the bank or financial institution. Some examples of expenses are as follows:

- a service charge, "per check" charge or administrative or processing charge
- carfare in order to get to the bank or financial institution to withdraw wages

## **Withdrawal of Directly Deposited Wages**

An employee shall not be obliged to lose a substantial amount of uncompensated time in order to withdraw wages from a bank or financial institution. Although the employer is not required to provide employees with paid time in which to withdraw such monies, the Department has held that the employer should provide for the loss of time when the employee requires more than 15 minutes to withdraw wages. Such time includes travel time to and from, as well as actual time spent at the bank or financial institution in withdrawing such monies. Moreover, the withdrawal of wages may not interfere with an employee's meal period to the extent that it decreases the meal period to less than thirty minutes. Thus, although the time required for withdrawal of wages may be 15 minutes or less, the loss of even 8 or 10 minutes from a thirty minute meal period curtails it to an unacceptably short duration.

The law requires that an employee be paid wages in full on regular agreed paydays. The direct deposit of wages in a bank or financial institution, therefore, should anticipate that an employee should be able to withdraw such wages in full on the regular agreed payday. The arrangement of direct deposit, therefore, may not include the withholding of any part of the employee's wages on the regular payday or afterwards.

Since it is not possible to anticipate all the potential wage payment problems which may be created by a direct deposit arrangement, these "Guidelines" do not cover all situations that might arise. Further inquiries may be addressed to the nearest office of the Division of Labor Standards, New York State Department of Labor, listed below:

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