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APA Government Relations Update

Hampton Roads Chapter
April 9, 2015

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Presidential Initiatives

1. Minimum wage
    a. Raise national minimum wage to $10.10/hr over three years
    b. Would impact >700K Virginians
    c. Would impact 28 million Americans
    d. 29 states have minimum wages higher than the federal
    e. APA has no policy position on minimum wage, other than to demand sufficient time to implement change

2. Overtime
    a. Overtime rules have eroded over the years.
    b. Current salary test to meet white-collar exemption is $455/wk ($23,660/yr), which is below poverty line for family of 4 ($23,850).
    c. Managers working excessive hours may make less than minimum wage.
    d. CA and NY have addressed OT in law.

3. Paid time off
    a. 43M workers do not have any sick leave.
    b. In 2015, both parents work in 60% of families, up from 40% in 1965.
    c. 60% of women with children under age 5 are employed, compared to 30% in the 1970s.
    d. CA, NY, RI have implemented rules for time off.

4. Paycheck Fairness Act
    a. Many companies prohibit or discourage employees from discussing pay.
    b. The National Labor Relations Act forbids pay secrecy, but the NLRA has no penalty.
    c. Pay secrecy is a major contributor to pay discrimination in the workplace.
    d. Paycheck Fairness Act would enact penalty mechanism in line with civil rights laws.

5. Equal Pay
    a. Women as a group currently make 23% less than men for the same work.
    b. Asian American women make 10% less than Caucasian men for the same work.
    c. Caucasian women make 22% less than Caucasian men for the same work.
    d. African American women earn 35% less than Caucasian men for the same work.
    e. Hispanic women earn 44% less than Caucasian men for the same work.

Child Support

APA recently submitted comments concerning OCSE's Notice of Proposed Rulemaking (ACF-2014-0004-0001) on the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs. Recommendations include the following:

1. Collection and Disbursement of Support Payments by the IV-D Agency
    a. Enforce the legal requirement that SDUs process both IV-D and non-IV-D payments.
    b. SDUs should continue processing spousal support payments after their associated child support payments are released.
2. Guidelines for Setting Child Support Awards
    a. Obligations should consider a parent's actual earnings and income rather than imputing the person's earnings and income.
    b. No increase in Verification of Employment requests. States should rely on National Directories of New Hires, Financial Institution Data Match, and Multistate Financial Institution Data Match.
3. Procedures for Income Withholding
    a. APA support changes to the Social Security Act that:
        i. Require states to use the OMB-approved form, and
        ii. explicitly state that non-IV-D payments be routed through the SDU.
    b. APA asks OCSE to create a document with standardized language that may be used to accompany an IWO being returned. This may serve to alleviate tensions when employers reject orders served in good faith.
    c. APA recommends that OCSE clarify to states and to employers that variations to the IWO are cause for rejection.
4. Termination Notification
    a. Employers may report employment terminations for IV-D cases through OCSE's e-IWO process or on the Child Support portal.
    b. APA recommends that OCSE also process non-IV-D cases through the portal.
    c. An employer that reports ALL termination information (IV-D and non-IV-D) through the e-IWO process or through the portal for participating states should be considered to have met the legal requirement for reporting this information to the respective states.
5. Future Actions/Amendments to Withholding Orders
    a. APA recommends that OCSE clarify that withholding orders are not to include instructions to be implemented in the future (e.g., step-down payments).
    b. Changes to an order should be submitted as an amended order.
    c. Failure to comply with withholding instructions to be implemented at a future date should be considered grounds for rejection.
6. Effective Date
    a. APA supports a general effective date of one year after publication for all states.

Payroll Cards

1. **Colorado SB 101** would allow employers the ability to make all wage payments electronically to a bank account or to a payroll card, with one significant provision. The employer must allow the employee 7 days to provide a bank account number before issuing a payroll card, which might require that a first paycheck be paid by paper check.
2. **Connecticut SB 430** would prohibit employers from requiring that employees accept their pay on a payroll card as a condition of employment.
3. **Connecticut SB 908** requires that employees must be offered a choice of payment. Failure to notify the employer of that choice is considered acceptance of a paycard. An employee may opt at any time to have funds paid by direct deposit.
4. **Florida HB 325** and **SB 456** are companion bills that would include payroll cards and direct deposit as acceptable methods by which labor pools might pay day laborers. SB 456 would allow day laborers to refuse payment by payroll card or direct deposit.
5. **Georgia SB 88** would require that, upon rolling out a paycard program, an employer wait 30 days before making payments to the cards and provide employees with a written explanation of the program.
6. **Iowa HSB 94** and **SSB 1004** would codify employers' ability to pay wages by payroll card. Employees would need to be allowed at least one free withdrawal per pay period, no less than two per month, and unlimited free telephone access to account balances.
7. **Iowa HSB 23** would allow employers to transition all employees (unless covered by a collective bargaining agreement) over to electronic payments.
8. **Minnesota SB 444** would allow employers to offer new hires a choice between payroll cards and direct deposit, without the option of a paper check.
9. **New York AB 3109** and **SB 2590** would recognize payroll cards as an acceptable method of payment. Employers would need to: obtain employees' written authorization; also offer direct deposit; provide a list of any fees that might apply; provide one free withdrawal each pay period. Employees paid more frequently than weekly would be entitled to one free withdrawal per week. Employees must have free access to account balances through an automated telephone system and one additional electronic means.
10. **Rhode Island SB 351** Employees must be able to make at least one free withdrawal per pay period for up to the full amount of the employee's net wages. Employees paid more frequently than weekly must be allowed one free withdrawal per week. Employees must be provided access to account balances through an automated telephone system and one additional electronic means, without cost.
11. **Washington HB 1211** says that employers may pay by payroll card, but if there is a fee for using the card, the employer must provide an alternative method that allows employees to obtain their wages without any fees or costs. Prohibited fees and costs do not include fees that are not imposed by the employer, such as check-cashing fees imposed by third parties.

CFPB Proposed Rules

The Consumer Financial Protection Bureau has proposed regulations governing prepaid financial products, including payroll cards. Through the new regulations, CFPB aims to apply more stringent consumer protections for these various cards. Most notably, CFPB would like consumers to have an easier time comparing the relative strengths and weaknesses of the different financial products. To do this, the CFPB proposes that card issuers prepare "disclosure documents," which outline the features and especially the fees that might apply when using the cards. APA weighed in on the topic because anything affecting how payroll cards work will also affect how APA members are able to pay employees. With regard to the disclosure requirements, APA called out three issues.

1. Failure to provide employees with crucial program information

Although the disclosures include an awful lot of information, they fail to provide employees with some very crucial information. CFPB would require that employees be provided with two disclosures: a short form and a long form. The short form would include the ATM fee an employee might be charged to access wages. This implies that the cardholder will always be charged an ATM fee, even though so many card programs offer one or more free withdrawals. And it wouldn't make any reference to the fact that an employee can always access all of her wages down to the penny by going into a bank and talking to a teller. APA believes that the information CFPB is *not* including in the disclosures is every bit as important as the information that is included.

2. The disclosures discourage employees from using payroll cards

CFPB proposes that the short form include a statement that says, "You do not have to accept this payroll card. Ask your employer about other ways to get your wages." It sounds as though employees are being discouraged from using the cards. We also question whether the CFPB's proposed statement is accurate. In half the states, employers may offer employees the choice between direct deposit to a bank account or to a payroll card, without offering the option of a paper check. If an employee in one of those states doesn't have a bank account or doesn't want to provide the account information to the employer, it may well be that the employee ***does*** have to accept the card – if she wants to be paid. We suggested more neutral language: "You have options on how you can receive your wages. Ask your employer about those options."

3. Burdensome requirements on payroll card issuers that may impact the quality of their programs.

Card providers will need to publicly post the prepaid agreements they have with their clients, the employers. Each provider may have hundreds, even thousands of agreements. The CFPB proposes to also post all of them on its own website. However, comparison shopping is irrelevant for payroll cards, since it is the employer and not the employee who chooses the card provider. If anyone did try to compare, the amount of information would be overwhelming.

APA's comments to CFPB are available at www.americanpayroll.org/government/government-007.

Garnishment Reform

1. Model Garnishment Bill
    a. APA proposed it in 2012
    b. Uniform Law Commission's draft is nearly complete

2. APA recommendations for model law
    a. Garnishments should continue until paid in full or released by the creditor, as is required in 27 states.
    b. Employers should not be required to make multiple answers creditors.
    c. Multiple garnishment orders should be processed at the same time.
    d. Remittances should be made regularly, on payday, as is required in 27 states.
    e. Employers should be allowed to charge reasonable administrative fees.
    f. Penalties for noncompliance should be limited to the amount not withheld and paid over. Employers should not be held liable for the entirety of the employee's debt

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Mobile Workforce State income Tax Simplification Act

Major provisions:

- 30-day safe harbor against nonresident taxation while on business in a nonresident state.
- 30 days is cumulative, not consecutive. Retroactive feature may cause complications for payroll; however, that is no different than the current practice applied by most companies.
- Provisions do not apply to high earners such as athletes and entertainers
- A work day is assigned to a nonresident state (e.g., New York) when any part of the work day is in that nonresident state (but a single day may be assigned only to one nonresident state)
- Impact of legislation in selected states:

State	% change	$ change
California	**-0.01**	**-$ 6.2M**
New York	**-0.07**	**-$45.2M**
New Jersey	**0.09**	**$26.2M**
Rhode Island	**0.12**	**$ 3.3M**
Virginia	**-0.01**	**-$ 1.3M**
Total states	**-0.01**	**-$42.0M**