

LEXSTAT 39 N.J.R. 3871(A)

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**RULE PROPOSALS**

**LABOR AND WORKFORCE DEVELOPMENT  
WAGE AND HOUR COMPLIANCE**

*39 N.J.R. 3871(a)*

**Reproposed Amendments: *N.J.A.C. 12:55-1.2 and 2.4***

[Click here to view Interested Persons Statement](#)

**Wage Payments**

**Time and Mode of Payments**

Authorized By: David J. Socolow, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20, 34:1A-3(e), 34:11-4.4 and 34:11-4.11.*

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2007-298.

A **public hearing** on the reproposed amendments will be held on the following date at the following location:  
Friday, October 5, 2007  
10:00 A.M. to 12:00 Noon  
N.J. Department of Labor and Workforce Development  
John Fitch Plaza  
1st Floor, Conference Room  
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609)292-2789 if you wish to be included on the list of speakers.

Submit written comments by November 16, 2007 to:  
Frederick Cohen, Regulatory Officer  
Office of Legal and Regulatory Services  
N.J. Department of Labor and Workforce Development  
P.O. Box 110 - 13th Floor

Trenton, New Jersey 08625-0110  
Fax to: (609) 292-8246

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The agency proposal follows:

### Summary

In the December 18, 2006, issue of the New Jersey Register, 38 *N.J.R. 5311(a)*, the Department proposed amendments to *N.J.A.C. 12:55-1.2* and *2.4*, which would (1) require that an employer bear the burden of any fees associated with the return of a payroll check due to insufficient or uncollected funds, (2) allow for the payment of wages to an employee through direct deposit and through the use of a payroll debit card, and (3) permit employers to establish regular paydays less frequently than semimonthly for a certain class of employees, provided that those employees are paid in full at least once each calendar month on a regularly established schedule.

Following publication of the December 18, 2006, notice of proposal, the Department received a number of comments, the vast majority of which pertain to the payroll debit card issue. Specifically, Joe Samuel, Senior Vice President of First Data Corporation, Greenwood Village, Colorado, expressed concerns that "some of the specific language proposed would have the unintentional effect of prohibiting payroll debit card programs that give New Jersey employees choice and flexibility equivalent to, or in some cases better than, paper payroll checks." Mr. Samuel suggested that proposed *N.J.A.C. 12:55-2.4(i)4* be changed so that the charging of fees for the use of a payroll debit card would not constitute a violation of the chapter. Mr. Samuel explained,

We believe the intent of this provision [proposed *N.J.A.C. 12:55-2.4(i)4*] is to allow a program that, like the Money Network programs, gives employees a means of withdrawing their entire pay, to the penny, in a single transaction without incurring program fees . . . We also interpret this provision as allowing program fees to be charged on other card transactions if the employee prefers to just use the card itself for multiple types of transactions throughout the pay period. Providing employees the convenience and ease of using a single card in a variety of ways and locations involves costs to the program provider. We believe it is reasonable to pass these costs on to the employees who benefit from this convenience, as long as the employee can make the choice whether to keep his pay on the card or to cash or transfer the funds in one transaction.

Mr. Samuel also took issue with the requirement within proposed *N.J.A.C. 12:55-2.4(i)1* through 3 that consent by the employee be a prerequisite to the payment of wages through the use of a payroll debit card. Mr. Samuel explained,

We believe that if the employee is permitted to withdraw his or her wages in full without fee that the payment of wages via payroll debit card should be allowed as a condition of employment. Payroll card programs are designed to help employers reduce the overhead and administrative costs associated with paper-based paycheck systems. If employers cannot mandate that employees choose either direct deposit or a payroll debit card feature, then the employers may abandon the payroll card program altogether because of the tremendous cost of supporting both payroll debit card and paper-based checks programs. Unbanked employees will ultimately suffer because they will be forced back into the expensive and unsafe paper check cashing system.

In addition, Mr. Samuel asserted that proposed *N.J.A.C. 12:55-2.4(i)5*, which would require that when an employee is paid his or her wages by payroll debit card, he or she shall be furnished with a statement of deductions made from his or her wages for each pay period such deductions were made, should be changed so as to indicate that "compliance with the federal electronic fund transfer act (*15 U.S.C. 1693* et seq.) and its implementing regulation, Regulation E (*12 CFR 205* et seq., as amended, effective July 1, 2007) applicable to payroll cards will constitute compliance with this section." Mr. Samuel explained,

The Electronic Fund Transfer Act (EFTA) was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems and to protect individual consumer rights with regard to electronic fund transfers.

In 2006, after contemplating feedback from the financial services and payroll industries, the Federal Reserve Board modified Regulation E to include payroll cards, thereby subjecting payroll cards to the consumer protections that Regulation E currently affords to electronic funds transfers. We believe that state law should mirror Regulation E for the treatment of periodic statements as well as consumer protections regarding disclosures, error resolution procedures and limited consumer liability.

Finally, Mr. Samuel suggested that the Department should define the phrase "without difficulty," which is used within proposed *N.J.A.C. 12:55-2.4(i)4*. Mr. Samuel stated, "As currently written, we feel that it [the phrase, "without difficulty"] is vague and subject to various interpretations."

Jodi Golinsky, Vice President, Regulatory and Public Policy Counsel, for MasterCard Worldwide, Purchase, New York, took issue with the requirement under proposed *N.J.A.C. 12:55-2.4(i)4i* that employees be permitted, using the payroll debit card, to withdraw wages in full, in lawful money of the United States without any fee and without difficulty. Ms. Golinsky argued, "By prohibiting the charging of fees for withdrawing funds using a payroll card, the proposal would limit an employee's access to ATMs, because ATMs that normally charge withdrawal fees would be unavailable for employees with payroll cards, even if the employee was willing to accept the withdrawal fees. Thus, to the extent that the proposal does not discourage employers from using payroll cards, it will significantly diminish the benefits of payroll cards by limiting the locations where they can be used." Similarly, with regard to the issue of requiring the payment of wages in full, Ms. Golinsky asserted:

Under the proposal, an employee must be able to withdraw his or her wages "in full." As noted above, many employees use debit cards at ATMs to access wages deposited into their account by direct deposit or otherwise. Payroll cards, like debit cards and stored value cards, also may be used at ATMs to withdraw cash. Typically, however, the amount of cash that may be withdrawn at an ATM is limited by the bank or ATM owner or operator, for security and other reasons. The banking public is accustomed to such limitations. The limitations apply regardless of the source of the funds in the account. Thus, employees who receive wages by direct deposit (or check) and who use a debit card to access the funds in their account are subject to these limitations. The proposal does nothing to change this practice, but instead might be interpreted to require that such limitations not apply to payroll cards, in contrast to other stored value cards or debit cards. There is no logical reason to make such a distinction: Employees who receive their wages on payroll cards should be subject to the same limitations that apply to all debit and stored value cards.

In addition, Ms. Golinsky took issue with the requirement within proposed *N.J.A.C. 12:55-2.4(i)4ii* that an employee should be permitted, using the payroll debit card, to transfer his or her wages in full, without any fee and without difficulty, from the payroll debit card account to an account maintained in a financial institution in the name of the employee. She stated:

It is MasterCard's experience that banks generally do not have the capability of allowing a direct transfer of funds from a payroll card account to another account. Thus, the proposal would require banks to develop and implement this capability. The added cost of doing so will likely discourage at least some banks from issuing payroll cards, and this provision of the proposal will likely make it more difficult for employers to offer payroll cards.

Moreover, the ability to transfer funds to another account would apply only to employees who already have a bank account (and thus not to the unbanked), and such employees are likely to elect to be paid by direct deposit, rather than by payroll card. Thus, this provision appears to provide little if any benefit to the banked, and will decrease the likelihood that employers offer payroll cards.

Ms. Golinsky asserted that proposed new *N.J.A.C. 12:55-2.4(i)* would "impose requirements on the use of payroll

debit cards that are not imposed on other forms of payment (such as direct deposit)." Like Mr. Samuel, she also took issue with the use of the phrase "without difficulty." Specifically, she stated:

We first note that this phrase is not defined in the Proposal, and thus it is unclear from the language what is intended. At a minimum, this language would give rise to disputes and, given its ambiguity, would make employers more reluctant to offer wages on payroll debit cards.

We understand, however, that the intent of the Proposal may be to require that employees be able to withdraw wages using a payroll debit card at one or more locations that are geographically convenient to the employee. If this is the concept that is intended, we respectfully suggest that this concept will impose unreasonable burdens on employers, and thus discourage them from using payroll debit cards.

Robert J. Tartaglia, Acting President and Director of Government Relations with the New Jersey Bankers Association, objected to the requirement within proposed *N.J.A.C. 12:55-2.4(h)4*, which pertains to the payment of wages by direct deposit, that "[t]he employee's wages so deposited shall be subject to withdrawal and other disposition by the employee to the same extent and in the same manner as if such deposit had been made directly by the employee under (d) [paycheck] above." He maintained that this "is not permissible under federal banking law or feasible for those who do not wish to share the terms of their banking arrangements with their employers." He recommended striking *N.J.A.C. 12:55-2.4(h)4*. As to payroll debit cards, Mr. Tartaglia shares the concerns of Mr. Samuel and Ms. Golinsky relative to the charging of fees, the use of the phrase "without difficulty," the requirement within proposed *N.J.A.C. 12:55-2.4(i)4ii* that the employee shall be permitted using the payroll debit card to transfer his or her wages in full from the payroll debit card account to an account maintained in a financial institution in the name of the employee, and the requirement within proposed *N.J.A.C. 12:55-2.4(i)5* that the employee shall be furnished with a statement of deductions made from his or her wages for each pay period such deductions were made. Regarding the latter, Mr. Tartaglia, like Mr. Samuel, referred to Regulation E, which he maintains states that financial institutions are not required to provide paper periodic statements to consumers if the institution makes account transaction information available by telephone, electronically, and, upon consumer request, in writing.

In response to these comments, the Department is reproposing the amendments to *N.J.A.C. 12:55-1.2* and *2.4* with significant changes to proposed *N.J.A.C. 12:55-2.4(i)4*. Specifically, the Department has modified the language within proposed *N.J.A.C. 12:55-2.4(i)4* to more closely resemble the language used within proposed *N.J.A.C. 12:55-2.4(h)4*, which pertains to direct deposit and which is taken verbatim from *N.J.S.A. 34:11-4.2a*. In addition, as reproposed, the Department has stated explicitly within *N.J.A.C. 12:55-2.4(i)4i* that the employer would only be required to ensure that "on at least one occasion per pay period" the employee must be permitted to use the payroll debit card to withdraw wages in full without any fee and without difficulty. The Department has also added the words, "to the employee," when referring to the fee, so that proposed *N.J.A.C. 12:55-2.4(i)4i* now reads in pertinent part, ". . . to withdraw his or her wages in full, in lawful money of the United States, and without any fee to the employee and without difficulty." Finally, the Department has eliminated the requirement within proposed *N.J.A.C. 12:55-2.4(i)4ii* (as proposed within the December 18, 2006 issue of the New Jersey Register) that the employee be permitted, using the payroll debit card, to transfer his or her wages in full, without any fee and without difficulty, from the payroll debit card account to an account maintained in a financial institution in the name of the employee. These three changes, the Department believes, address the concerns of the commenters regarding the prohibition against charging of a fee for the use of a payroll debit card, which concerns are described in detail above.

With regard to use of the phrase, "without difficulty," this phrase is taken verbatim from *N.J.S.A. 34:11-4.2*, which states in pertinent part that, ". . . every employer shall pay the full amount of wages due to his employees . . . in lawful money of the United States or with checks on banks where suitable arrangements are made for the cashing of such checks by employees without difficulty and for the full amount for which they are drawn." Both direct deposit and payroll debit cards are alternatives to traditional payment by cash or check. However, whereas payment by direct deposit involves the transferring of wages to an employee's own personal bank account (thereby obviating the need for a discussion of withdrawal without difficulty), the payment of wages through the use of payroll debit cards is in one

regard more akin to the distribution of a payroll check than it is to the payment of wages by direct deposit, in that the employee (who may not have his or her own bank account) must bring the card (or check) somewhere (for example, a bank) in order to convert it into cash. The statute, which governs time and mode of payment, *N.J.S.A. 34:11-4.2*, indicates that the employer must make suitable arrangements for this process to occur (regarding payment of wages by check) "without difficulty" to the employee. The Department has always relied on this statutory language, without embellishment, when promulgating regulations, which pertain to time and mode of payment requirements (see existing *N.J.A.C. 12:55-2.4(d)*). The Department does not wish to, nor is it required to, deviate from this past practice.

With regard to the requirement within proposed *N.J.A.C. 12:55-2.4(i)5* that the employee who is paid by use of a payroll debit card must be furnished with a statement of deductions made from his or her wages for each pay period such deductions were made, as was explained in the notice of proposal, which appeared in the December 18, 2006 issue of the New Jersey Register, this requirement is in accordance with *N.J.S.A. 34:11-4.6c*. This New Jersey statutory requirement pertains to the responsibilities and obligations as between the employer and the employee with regard to the payment of wages. The Federal Electronic Fund Transfer Act (*15 U.S.C. §§1693 et seq.*) and its implementing regulation, Regulation E (12 CFR 205 et seq., as amended, effective July 1, 2007), pertain to the banking relationship between financial institutions and their customers. The requirements of the Federal law and regulations are not designed to protect employees against unlawful deductions from wages and, therefore, would be inappropriate for use within the context of the proposed rules.

Mr. Samuel contends that if the proposed rules are going to permit the employee to withdraw his or her wages in full without fee, then the payment of wages via payroll debit card should be allowed without the consent of the employee and, in fact, should be allowed as a condition of employment. Mr. Samuel explains, "If employers cannot mandate that employees choose either direct deposit or a payroll debit card feature, then the employers may abandon the payroll card program altogether because of the tremendous cost of supporting both payroll debit card and paper-based checks programs." *N.J.S.A. 34:11-4.2* requires that every employer shall pay the full amount of wages due his employees in lawful money of the United States or with checks on banks where suitable arrangements are made for the cashing of such checks by employees without difficulty and for the full amount for which they are drawn. The only statutory exception to the requirement that wages be paid by cash or check is at *N.J.S.A. 34:11-4.2a*, which allows employers to arrange with a financial institution or financial institutions to pay the wages of each employee by causing the amount of such employees wages to be deposited in an account maintained in any such financial institution in the name of such employee (direct deposit). *N.J.S.A. 34:11-4.2a* explicitly requires as a prerequisite to payment of wages through direct deposit that the employer obtain the consent of the affected employee. As explained in the original notice of proposal, the underlying premise of the Department's decision to allow the payment of wages through the use of payroll debit card accounts is that, "the Department considers the use of payroll debit cards to be akin to the payment of wages through direct deposit." See *38 N.J.R. 5311(a)*. It is only applying this reasoning, namely, considering the payment of wages by payroll debit card another type of direct deposit arrangement, that the Department has the statutory authority to allow this practice at all. Mr. Samuel's suggestion, in the face of the existing employee consent requirement within *N.J.S.A. 34:11-4.2a*, that the Department not only allow the payment of wages through payroll debit card, but also allow employers to mandate as a condition of employment that an employee choose between payment by direct deposit or payroll debit card, is without a shred of support in the law. The Department simply will not do it.

Regarding Ms. Golinsky's objection to the requirement that an employee must be able to withdraw his or her wages in full and her assertion that employees who receive their wages on payroll debit cards should be subject to the same limitations that apply to all debit and stored value cards, it is the Department's hope that Ms. Golinsky's concern will be addressed by the change on reproposal discussed above whereby *N.J.A.C. 12:55-2.4(i)4i* would indicate that on at least one occasion per pay period, the employee shall be permitted, using the payroll debit card, to withdraw his or her wages in full. Thus, the employer would only be required to make arrangements for the employee being paid wages by payroll debit card to be paid in full without a fee on one occasion per pay period. At all other times when the employee uses his or her payroll debit card, for example, at an ATM or at the supermarket, he or she might be charged a fee or be limited in the amount of cash, which he or she would be able to withdraw. If what Ms. Golinsky is suggesting is that there

should be no limitations whatsoever regarding payment in full or the charging of fees relative to the payment of wages through the use of payroll debit cards, then the Department simply cannot accommodate her. As discussed above, the law does not permit it.

Turning to the rule proposal in its entirety (including the payroll debit card issue), again, the Department is proposing amendments to *N.J.A.C. 12:55-1.2* and *2.4* which would (1) require that an employer bear the burden of any fees associated with the return of a payroll check due to insufficient or uncollected funds, (2) allow for the payment of wages to an employee through direct deposit and through the use of a payroll debit card, and (3) permit employers to establish regular paydays less frequently than semimonthly for a certain class of employees, provided that those employees are paid in full at least once each calendar month on a regularly established schedule.

The Department is proposing the inclusion of definitions within *N.J.A.C. 12:55-1.2* for the following terms: "check-deposit-return fee," "direct deposit," "financial institution," and, "payroll debit card." Each of these terms is used within the proposed amendments to *N.J.A.C. 12:55-2.4*, discussed in detail below.

The Department is proposing a new *N.J.A.C. 12:55-2.4(g)*, which would expressly state that a "check-deposit-return fee" is among the payroll-related charges for which an employer is responsible. Existing *N.J.A.C. 12:55-2.4(e)* already indicates that when a fee is charged for the cashing of a payroll check, the employer shall bear the burden of the fee. However, the Department has received a number of inquiries as to whether "a fee charged for the cashing of a payroll check" includes a fee assessed when the payroll check is returned due to insufficient or uncollected funds (in other words, when the payroll check has "bounced"). The Department does, in fact, consider such a fee to be included among the payroll-related fees for which an employer is responsible. Therefore, the Department is proposing that *N.J.A.C. 12:55-2.4* be amended so as to reflect that an employer is responsible for paying the check-deposit-return fee, which is assessed when a payroll check has been returned due to insufficient or uncollected funds.

In addition, since an employee who uses direct deposit will often have check-deposit-return fees automatically deducted from his or her account by his or her bank, the Department is proposing that *N.J.A.C. 12:55-2.4* be amended so as to indicate the manner in which such fees (levied against those employees using direct deposit) shall be reimbursed by the employer (that is, how quickly the employer must reimburse the fee and that the fee shall not be paid to the employee as wages).

The Department is also proposing amendments to *N.J.A.C. 12:55-2.4(d)* and a new *N.J.A.C. 12:55-2.4(h)*, which would acknowledge, pursuant to *N.J.S.A. 34:11-4.2a*, that in lieu of paying wages directly to an employee by cash or by payroll check, an employer may arrange with a financial institution or financial institutions to pay the wages of an employee by direct deposit. Also in accordance with *N.J.S.A. 34:11-4.2a*, proposed *N.J.A.C. 12:55-2.4(h)* would require that in order to pay an employee by direct deposit, the employer must first obtain written consent of the employee, must ensure that the employee's wages so deposited would be subject to withdrawal and other disposition by the employee to the same extent and in the same manner as if such deposit had been made directly to the employee by cash or payroll check, and must ensure that the employee shall, on timely notice to the employer, be permitted by the employer to discontinue the direct deposit arrangement. The Department would additionally require that the written consent mentioned above be obtained by the employer without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the direct deposit arrangement, that the written consent not be made a condition of hire or continued employment, and that the employee must be furnished with a statement of deductions made from his or her wages for each pay period such deductions were made. The latter requirement regarding the statement of deductions is in accordance with *N.J.S.A. 34:11-4.6c*. The former requirements (those pertaining to the nature of the consent obtained by the employer) are not contained explicitly in the law. However, the Department believes that their inclusion within the rules is vital, since in order for consent to be meaningful it must be obtained without coercion or intimidation.

In addition, the Department is proposing a new *N.J.A.C. 12:55-2.4(i)*, so as to allow an employer, in lieu of paying wages directly to an employee by cash or payroll check, to pay the wages of an employee by causing the amount of such employee's wages to be deposited in a payroll debit card account. The use of payroll debit card accounts for the

payment of wages is a relatively new practice. However, a number of states, including Pennsylvania, Delaware, Maine, Maryland, Michigan, and Virginia, have enacted laws or adopted regulations to expressly permit this practice.

The Department considers the use of payroll debit cards to be akin to the payment of wages through direct deposit, as permitted under *N.J.S.A. 34:11-4.2a*. Therefore, proposed *N.J.A.C. 12:55-2.4(i)* would impose the same conditions upon the use by employers of payroll debit cards as would be imposed by proposed *N.J.A.C. 12:55-2.4(h)* for the use by employers of direct deposit. Specifically, proposed *N.J.A.C. 12:55-2.4(i)* would require that the employee shall first consent in writing to the deposit of his or her wages in a payroll debit card account, that the consent must be obtained by the employer without intimidation or coercion, that the consent must not be made a condition of hire or continued employment, that, on at least one occasion per pay period, the employee be permitted to withdraw his or her wages in full, in cash, without any fee to the employee and without any difficulty, that the employee be furnished with a statement of deductions made from his or her wages for each pay period such deductions were made, and that the employee must be permitted, on timely notice to the employer, to rescind his or her consent and, thereby, terminate the payment of wages by payroll debit card.

The Department is also proposing new *N.J.A.C. 12:55-2.4(j)*, which would state the general rule, under *N.J.S.A. 34:11-4.2*, that every employer shall pay the full amount of wages due his employees at least twice during each calendar month, and new *N.J.A.C. 12:55-2.4(k)*, which would set forth the exception to the general rule, namely, that an employer may establish regular paydays less frequently than semimonthly for employees who are exempt from overtime under *N.J.A.C. 12:56-7*, provided that the employee must be paid in full at least once each calendar month on a regularly established schedule.

*N.J.S.A. 34:11-4.2* already states that an employer may establish regular paydays less frequently than semimonthly for, "bona fide executive, supervisory and other special classifications of employees." The Department is proposing new *N.J.A.C. 12:55-2.4(k)*, so as to make clear that it considers the full range of employees for whom an employer may establish paydays less frequently than semimonthly, including the "other special classifications of employees" mentioned in *N.J.S.A. 34:11-4.2*, to consist of those employees who satisfy the overtime exemption criteria set forth at *N.J.A.C. 12:56-7*.

As indicated above, the lion's share of comments received by the Department in response to the notice of proposal published in the December 18, 2006 issue of the New Jersey Register focus on the foregoing issues relative to the payment of wages through the use of payroll debit cards. However, the Department did also receive comments with regard to proposed new *N.J.A.C. 12:55-2.4(h)*, pertaining to payment of wages through direct deposit, and with regard to proposed new *N.J.A.C. 12:55-2.4(k)*, which would make clear that the Department considers the full range of employees for whom an employer may establish paydays less frequently than semimonthly, including the "other special classifications of employees" mentioned in *N.J.S.A. 34:11-4.2*, to consist of those employees who satisfy the overtime exemption criteria set forth at *N.J.A.C. 12:56-7*. Specifically, with regard to proposed new *N.J.A.C. 12:55-2.4(h)*, Mr. Tartaglia's remarks are summarized above, along with his comments pertaining to the use of payroll debit cards. With regard to proposed new *N.J.A.C. 12:55-2.4(k)*, C. Regan Almonor, Esq., from Legal Services of New Jersey maintains that, as proposed, *N.J.A.C. 12:55-2.4(k)* would expand the New Jersey Wage Payment law's timely pay exemptions to all worker categories exempted from State overtime requirements, a net addition, he asserts, of three new categories of exemptions to semi-monthly pay: administrative, professional and highly specialized computer systems employees. Mr. Almonor recommends that the Department withdraw proposed new *N.J.A.C. 12:55-2.4(k)* and maintain the existing regulations pertaining to the time of wage payments. These comments prompted no changes from the Department in the proposed amendments and new rules on reproposal and they will not be addressed in this notice of proposal. If either Mr. Tartaglia or Mr. Almonor wish for their earlier comments to be considered by the Department, they should resubmit them prior to the closing date for submission of comments in response to this particular notice of proposal.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to *N.J.A.C. 1:30-3.3(a)5*.

## Social Impact

The proposed amendments to *N.J.A.C. 12:55-1.2* and *2.4* regarding the payment by employers of check-deposit-return fees would have a positive social impact in that they would eliminate any possible confusion among both employees and employers as to whether the Department considers check-deposit-return fees to be among the types of fees for which the employer is responsible. It has been the Department's practice, under existing *N.J.A.C. 12:55-2.4*, to consider such fees to be among the "fee[s] charged for the cashing of a payroll check" for which "the employer shall bear the burden." It is in the best interests of all concerned that the rules be amended so as to explicitly state this. Similarly, the proposed amendments to *N.J.A.C. 12:55-2.4* regarding an employer's right to establish paydays less frequently than semimonthly for certain classes of employees would have a positive social impact in that they would eliminate any possible confusion as to what constitutes "bona fide executive, supervisory and other special classifications of employees" for purposes of determining which employees must be paid twice per month and which employees may be paid less frequently than semimonthly.

The proposed amendments to *N.J.A.C. 12:55-1.2* and *2.4* pertaining to payment of wages through direct deposit and by use of payroll debit cards would also have a positive social impact. Specifically, proposed new *N.J.A.C. 12:55-2.4(h)* would reflect what already appears at *N.J.S.A. 34:11-4.2a* with regard to the permissibility of wage payments by direct deposit. Since existing *N.J.A.C. 12:55-2.4(d)* states that all wage payments shall be made in either cash or by payroll check, it is important that the statutory exception for use of direct deposit be included within *N.J.A.C. 12:55-2.4*. It is also important that the statutory conditions for use of direct deposit by employers be set forth clearly in the rules. Those conditions appear at proposed new *N.J.A.C. 12:55-2.4(h)1* through 6.

Similarly, proposed new *N.J.A.C. 12:55-2.4(i)* would benefit both employers and employees in that it would explicitly acknowledge the use of payroll debit cards as a type of direct deposit under the law. Proposed new *N.J.A.C. 12:55-2.4(i)*, like proposed new *N.J.A.C. 12:55-2.4(h)*, would also set forth conditions for the use by employers of payroll debit cards. Those conditions, proposed at *N.J.A.C. 12:55-2.4(i)1* through 6, are consistent with *N.J.S.A. 34:11-4.2a* and are intended to protect employees.

## Economic Impact

The proposed amendments pertaining to the payment by employers of check-deposit-return fees could arguably have a negative economic impact upon employers who maintain that the existing law and rules do not require that employers pay such fees. However, the Department has traditionally considered check-deposit-return fees to be among those fees for which the employer is currently responsible under *N.J.A.C. 12:55-2.4(e)*, as a "fee [] charged for the cashing of a payroll check." The proposed amendments simply eliminate any confusion as to this existing practice.

Similarly, employees should not be affected economically by the proposed amendments. However, whereas prior to the proposed amendments, an employee might have experienced some difficulty asserting his or her right to be free from the payment of such fees, in the event that the proposed amendments are ultimately adopted as rule, that employee would, it is hoped, no longer experience such difficulties.

The proposed amendments pertaining to the payment of wages by direct deposit and payroll debit cards should have a positive economic impact on both employers and employees. These amendments acknowledge and permit the use of improvements in technology regarding the payment of wages, while incorporating requirements and conditions, which would protect the interests of employees. The Department believes that the proposed amendments strike the appropriate balance between being business friendly and protecting the rights of workers. The use of direct deposit and payroll debit cards eliminate many of the employer expenses associated with the production and distribution of payroll checks. Direct deposit and payroll debit cards also benefit employees in that they provide effective and easy means for many employees to receive their wages.

The proposed amendments regarding an employer's right to establish paydays less frequently than semimonthly for

certain classes of employees would have a positive economic impact upon employers who would be able to limit employer expenses associated with the production and distribution of payroll checks to affected employees. Those same amendments would have no economic impact upon affected employees who, under the proposed amendments, would continue to be paid precisely the same amount of money in wages, but, at worst, would receive their paychecks once per month, rather than twice per month.

### **Federal Standards Statement**

The proposed amendments are governed by *N.J.S.A. 34:11-4.1* et seq. and are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

### **Jobs Impact**

The proposed amendments would have no impact on either the generation or loss of jobs.

### **Agriculture Industry Impact**

The proposed amendments would have no impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

The proposed amendments would impose no reporting or recordkeeping requirements on small businesses as that term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. With regard to compliance requirements, as indicated in the Summary above, all employers, including small businesses, would be required to pay any check-deposit-return fees associated with the payment of wages. Moreover, where an employer wishes to use either direct deposit or payroll debit cards for the payment of wages, the employer would be required to comply with the conditions set forth at proposed new *N.J.A.C. 12:55-2.4(h)1* through 6 (direct deposit) and *N.J.A.C. 12:55-2.4(i)1* through 6 (payroll debit cards). As indicated within the Economic Impact above, it is not anticipated that the proposed amendments would have any potential adverse economic impact on businesses, including small businesses. The only potential cost to small businesses resulting from the proposed amendments would be the payment of check-deposit-return fees, which the Department already considers to be among the payroll-related charges for which all employers, including small businesses, are responsible. The other amendments could only lessen the cost burden on small businesses, decreasing payroll expenses by permitting the use of alternative wage payment methods, such as direct deposit and payroll debit card accounts and allowing for the payment of exempt workers once per month rather than once every two weeks. Furthermore, the proposed amendments would not require the use of professional services.

### **Smart Growth Impact**

The proposed amendments would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### 12:55-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

...

**"Check-deposit-return fee"** means a charge which results from a payroll check having been returned due to insufficient or uncollected funds.

...

**"Direct deposit"** means payment of the wages of an employee by causing the amount of such employee's wages to be deposited in an account or accounts maintained in a financial institution or financial institutions in the name of the employee.

...

**"Financial institution"** means any State-chartered or Federally-chartered institution authorized to accept deposits in New Jersey.

...

**"Payroll debit card"** means a magnetically encoded card issued by a financial institution, which provides an employee with the means of obtaining the full amount of all wages earned in a pay period in a form that is equivalent to payment in lawful money of the United States, payment by check or payment by direct deposit.

12:55-2.4 Time and mode of payment

(a)-(c) (No change.)

(d) [Payment] **Except under the circumstances set forth in (h) and (i) below, payment** of wages shall be in lawful money of the United States or with checks drawn on [banking] **financial** institutions where suitable arrangements are made for the cashing of such checks by employees without difficulty and for the full amount for which they were drawn.

(e)-(f) (No change.)

**(g) The employer shall be responsible for payment of check-deposit-return fees.**

**1. When an employee with direct deposit has his or her account debited with a check-deposit-return fee, the employer shall reimburse the employee as soon as possible, but no later than the next regularly scheduled payday.**

**2. Reimbursement by the employer under (g)1 above shall be for the full amount of the check-deposit-return fee and shall not be paid to the employee as wages.**

**(h) In lieu of paying wages directly to an employee in the manner prescribed in (d) above, an employer may arrange with a financial institution or financial institutions to pay the wages of an employee by direct deposit, provided that all of the following conditions are met:**

**1. The employee shall first consent in writing to the direct deposit of his or her wages;**

**2. Consent under (h)1 above shall be obtained by the employer without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the direct deposit arrangement;**

**3. Consent under (h)1 above shall not be a condition of hire or continued employment;**

**4. The employee's wages so deposited shall be subject to withdrawal and other disposition by the employee to the same extent and in the same manner as if such deposit had been made directly by the employee under (d) above;**

**5. The employee shall be furnished with a statement of deductions made from his or her wages for each pay period such deductions were made; and**

**6. The employee shall, on timely notice to the employer, be permitted by the employer to elect not to have his or her wages deposited in the manner prescribed in this subsection and to be paid his or her wages directly in the manner provided under (d) above or as provided under (i) below.**

**(i) In lieu of paying wages directly to an employee in the manner prescribed in (d) above, an employer may pay the wages of an employee by causing the amount of such employee's wages to be deposited in a payroll debit card account, provided that all of the following conditions are met:**

**1. The employee shall first consent in writing to the deposit of his or her wages in a payroll debit card account;**

**2. Consent under (i)1 above shall be obtained by the employer without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the payroll debit card account deposit arrangement;**

**3. Consent under (i)1 above shall not be a condition of hire or continued employment;**

**4. The employee's wages so deposited in a payroll debit card account shall be subject to withdrawal and other disposition by the employee to the same extent and in the same manner as if such deposit had been made directly by the employee under (d) above into an account maintained in a financial institution in the name of the employee.**

**i. On at least one occasion per pay period, the employee shall be permitted, using the payroll debit card, to withdraw his or her wages in full, in lawful money of the United States, without any fee to the employee and without difficulty;**

**5. The employee shall be furnished with a statement of deductions made from his or her wages for each pay period such deductions were made; and**

**6. The employee shall, on timely notice to the employer, be permitted by the employer to elect not to have his or her wages deposited in the manner prescribed in this subsection and to be paid his or her wages directly in the manner provided under (d) above or in the manner provided under (h) above.**

**(j) Except under the circumstances set forth in (k) below, an employer shall pay the full amount of wages due his employees at least twice during each calendar month, on regular paydays designated in advance by the employer.**

**(k) An employer may establish regular paydays less frequent than semimonthly for employees who are exempt from overtime under N.J.A.C. 12:56-7, provided that the employee shall be paid in full at least once each calendar month on a regularly established schedule.**