

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENTLEGAL SECTION
Golden Gate Avenue, Room 3166
San Francisco, CA 94102
(415) 703-4150H. THOMAS CADELL, JR., *Chief Counsel*

February 3, 1994

Loren Karnick
Counsel
Citicorp Services, Inc.
8430 W. Bryn Mawr Ave.
Chicago, IL 60631

Re: Direct Deposit of Wages

Dear Mr. Karnick:

This letter is in reply to your letter of December 13, 1993, as amended and clarified by your letter of January 25, 1994. In summary, you ask for an opinion as to whether employers in the State of California offering the service provided by your firm will be in compliance with California law.

You state that Citibank's PayTM service is an electronic alternative for the payment of employees who do not currently maintain bank accounts. An employer contracts with Citibank to provide services associated with the program to its employees and is only available to individuals who are employed by that employer. Participation by an employee is strictly voluntary. The employer's obligation under its agreement will be to transfer to Citibank the funds for deposit to the PayTM accounts of employees who participate in the program. This is, you state, the same as employers currently do in depositing funds to employee's accounts who already have direct deposit or by issuing checks to employees who do not elect direct deposit.

After the employer has decided to offer Citibank's PayTM service to its employees, all employees will be eligible to participate. An employee would sign up for the service through his or her employer by completing a PayTM account application to open a PayTM account. Upon acceptance of the account application by Citibank in New York, the employee will be issued a PayTM card through the mail and thereafter the employee's pay will be directly deposited to the employee's PayTM account at Citibank. The employee will then access his funds after their deposit through the use of his PayTM card and his chosen personal identification number (PIN) at any of the hundreds of Automated Teller Machines (ATMs), located at financial institutions and free-standing, and Point-of-Sale (POS) locations, such as grocery stores and gas stations.

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In response to your original letter, I sent you a letter on January 13, 1994, asking: (1) whether Citibank is a bank in California, and (2) whether there is a cost to the employee to access the ready tellers to recover the wages deposited. In reply, by letter dated January 25, 1994, you advised: (1) that Citibank is a national banking association located in the State of New York, and (2) the employees will be entitled to a minimum number of free withdrawals per pay period when accessing the employee's PayTM account through an ATM.

As you know, California Labor Code §213(d) allows an employer to deposit "wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association or credit union of the employee's choice in this state..."

In order to establish the legislative intent section 213 must be read in light of the provisions of Labor Code §212 which specifically prohibit the payment of wages by "[A]ny order, check, draft, note, memorandum, or other acknowledgement of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument..."

In the case of *People v. Turner* (1957) 154 Cal.App.2d Supp. 883, the court outlined the test for determining the validity of an "instrument":

"It is fair to sum up the provisions of the section as forbidding a person to issue in payment of wages an instrument that is not (1) negotiable, (2) payable in cash, (3) on demand, (4) without discount, (5) at an established place of business in the State, (6) the name and address of which appears on the instrument, and (7) which place of business has been prepared, by the deposit of funds, the establishment of credit, or by some arrangement of understanding, to pay the money called for by the instrument."

Juxtaposing those requirements, addressed as they are to the typical banking procedures of the past, with the more modern procedures available through technology, it would appear that the basic program you offer would meet those requirements.

The ATM card would be the instrument which is negotiable and payable in cash on demand, without discount¹ at an established

¹You have indicated that there are a limited number of times each pay period that the individual may use the ATM without charge. Thus, if the individual wished, he or she could withdraw all the wages represented by the deposit and thus satisfy the requirements of Labor Code §212(a).

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place of business (i.e., ATMs), the name and address of which appears on the instrument², and the establishment has been prepared, by the deposit of funds, the establishment of credit, or by some arrangement or understanding, to pay the money called for.

The only problem which this office anticipates is that since the wages are not deposited in a California institution, a subpoena for bank records in the event of a criminal complaint might not be recognized by your out-of-state firm. This obstacle could be overcome, however, if your firm waived any right it might have to extraterritorial service of subpoenas for bank records regarding these types of accounts. Citicorp would, of course, retain any other defense available to any California bank regarding the subpoena.

In the event Citicorp agrees, in writing, to waive the defense it may have to extraterritorial service of subpoenas for bank records regarding these types of accounts, the Division will be able to opine that the service your firm offers complies with California law.

Yours truly,


H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw

This requirement may be met by furnishing the cardholder with a booklet showing the locations of all or most of the ATMs throughout the state.

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