

ELECTRONIC WAGE PAYMENTS IN MONTANA

FREQUENTLY ASKED QUESTIONS

THE FOLLOWING ARE FREQUENTLY ASKED QUESTIONS AND ANSWERS. NOTHING ON THIS WEBSITE IS INTENDED AS LEGAL ADVICE. RESPONSES MAY BE DIFFERENT DEPENDING ON THE FACTS AS WE UNDERSTAND THEM, EMPLOYMENT CONTRACT AND/OR THE PRESENCE OF A COLLECTIVE BARGAINING AGREEMENT. IF YOU NEED LEGAL ADVICE, PLEASE CONSULT AN ATTORNEY.

1) What is an electronic wage payment?

An electronic wage payment is either:

- (a) an electronic funds transfer (“direct deposit”) into the employee’s financial institution (a bank or credit union) account with the employee’s pay; or
- (b) a debit card (“pay card”) issued to the employee, and which the employer deposits the amount of the employee’s pay.

2) May employers pay wages in Montana using electronic funds transfers?

Employers may offer employees the option of electronic direct deposit of wages, but may not require that an employee select a form of electronic transfer of funds. The employer needs the voluntary consent of the employee to provide electronic funds transfers. The consent may either be in writing or via an electronic means. The employer should be sure to keep a record of that consent. Electronic payment of wages is an “opt in” proposition in Montana, not an “opt out” where an employee has to affirmatively take steps to prevent electronic payment of wages.

3) May an employer use a debit card (a “pay card”) to pay wages?

Yes, if all of the following conditions are met:

- (a) the employee has the option to receive the full amount of the wages via a check (or cash, if the employer prefers), without requiring the employee take extraordinary steps to obtain the check;
- (b) the employee consents to the use of the debit card;
- (c) the employer provides a clear understandable guideline identifying the charges associated with the use of the debit card;
- (d) the full amount of the wages can be accessed, in cash, without incurring a fee in the initial withdrawal; and
- (e) the employee receives (either in writing or electronically) an itemized list of the deductions and authorized withholdings from the wages.

4) Does an employer comply with Montana law if the employer offers employees a choice between receiving wages either via an electronic funds transfer to a financial institution account or via a debit card?

No. An employer cannot force an employee into accepting an electronic payment of wages.

5) Does an employer comply with Montana law if the employee, as an alternative to being paid via a debit card or electronic funds transfer, can obtain authorization from the employer's payroll processor to write out a paper paycheck payable to the employee?

No. The Department of Labor and Industry believes that Montana law requires the employer to undertake the necessary steps to timely issue paychecks (or tender cash) to employees. Nothing in Montana law appears to allow an employer to transfer the responsibility for issuing a paycheck to employees who are not otherwise responsible for payroll preparation functions.

6) Are debit cards that are honored only at ATMs (automatic teller machines) an allowed form of wage payment in Montana?

No, unless the ATM can disburse the full amount of the wages in a single, no-fee withdrawal. Because ATMs do not dispense odd amounts (no coins, no one dollar bills, etc.), an employer would have to "round up" the amount of the wages so that the full amount of the wages could be disbursed by the ATM.

7) Does Montana have a requirement that if it offers debit cards as a wage payment option, there be a no-fee ATM within a certain maximum distance from the employee's usual workplace?

No. Montana law has not established a geographical proximity requirement for ATM access. Montana allows employees the freedom to choose whether a debit card is a suitable way to receive wages without regards to machine access. Employees who do not have a reasonably convenient way to access their wages are not likely to choose to use an electronic payment system such as a debit card.

8) Can an employer use a wage payment method that imposes a fee or forfeiture if the employee does not cash, withdraw, or otherwise transfer the wages in a certain amount of time?

No. Montana law does not authorize an employer to assess a fee or impose a forfeiture of wages simply because of a delay in the employee trying to obtain the funds.

9) If an employee decides not to withdraw or transfer the full amount of wages in an initial transaction, may the bank or debit card issuer impose a fee for subsequent transactions?

Yes. The amount of the per-transaction fee(s) should be disclosed to the employee at the time the employee authorized use of the electronic funds transfer. The failure to make an appropriate disclosure of fees may invalidate the employee's consent to participate in electronic fund transfers.

10) What happens if an employee tries to use a debit card and the ATM network is temporarily not available due to computer or other technical problems?

A short, temporary, and infrequent disruption (of an hour or less) in accessing wages is typically only a minor inconvenience for the employee. Service disruptions that are frequent or of more prolonged duration than an hour will likely cause greater inconvenience to the employee, and are more likely to generate a complaint to the Montana Department of Labor and Industry. Cases involving assertions of service disruptions that are tantamount to a delay in timely payment of wages are handled by the Department on a case-by-case basis.

11) Can the employer or debit card issuer cancel or discontinue the use of the debit card?

Yes, but only with reasonable advance notice to the employee, and where there are reasonable means for the employee to withdraw all of the funds in the account. A cancellation provision which purports to work a forfeiture of some or all of the employee's funds is not allowed.

12) If an employee agrees to receive electronic wage payments, can the employee change her or his mind at a later date and go back to receiving a regular [non-electronic] paycheck?

Yes. An employer must honor the change as promptly as is feasible, although it may take one or two pay cycles before the change becomes effective.

13) What can an employee do if an employer is forcing the employee to select a form of electronic wage payment over the employee's objection?

The employee can file a complaint with the Montana Department of Labor and Industry's Labor Standards Bureau. The Department will contact the employer and conduct an informal investigation. In most cases, employers will voluntarily comply with the law once the employer is made aware of the legal requirements. An out-of-compliance employer may be subject to monetary penalties or legal action for improper payment of wages.

For more information

If you a question not answered here, you may e-mail the question to tmccormack@mt.gov or pmcdaniel@mt.gov, or call the Wage and Hour Unit at 406-444-5600.