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Labor and Employment Alert: \$1.85 Million Settlement Highlights the Risks with Payroll Debit Cards

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As more employers consider paying their employees with payroll debit cards, they need to be aware of lawsuits challenging the practice and what sparked those suits. In several cases, employees argued that the payroll cards imposed fees for withdrawals, transfers, balance inquiries, and/or inactivity, which allegedly made it impossible for employees to obtain their full, earned wages. A case in point is *Jessie Chavez v. PVH Corporation*, pending in federal court in the Northern District of California.

In *Chavez*, the plaintiffs filed a class action against clothing retailer Tommy Hilfiger and its parent PVH Corporation claiming that the companies' use of payroll cards violated California labor law in two ways. First, the payroll cards had usage fees; this meant that employees were unable to access their full wages contained on the cards. Second, the plaintiffs claimed that their consent had not been obtained before they were paid with debit cards.

The case was filed in 2013, and, after mediation, the parties had agreed to a \$1.85 million settlement. But the court twice rejected the settlement. The first time, the court balked at a provision allowing PVH to retain up to 20% of unclaimed funds while the plaintiffs' attorneys collected 25% of the settlement amount. The parties then filed a revised settlement agreement and removed the provision allowing the company to retain unclaimed funds; all unclaimed funds would now be distributed among the class members. The court again rejected the settlement. This time because the language of the release was overbroad. The court was concerned that the release sought to bar class members' claims in other pending class actions against PVH, such as a claim for unpaid overtime which was not part of the debit card suit. The parties then narrowed the scope of the release and filed for final approval. In the most recent filing urging the court to – finally – approve the settlement, the parties asserted that “[t]hey engaged in vigorous and substantial arms-length negotiations. Simply put, this case is a classic example of a proper, fair and adequate settlement.”

Chavez reminds employers to be aware of state-specific laws that may regulate pay cards either directly through legislation and regulation or indirectly through wage payment laws. The case also highlights the importance flexibility in negotiating – and, at times, renegotiating – a class action settlement. Contact your Vorys lawyer if you have questions about your current payroll debit card practices or if you are considering using them for your employees.