

ALISHA SICILIANO, CASSIE STARETZ, SAMANTHA LYNN EARLY, and JUSTIN ECK, Individually and on Behalf of all Similarly Situated Persons,

Plaintiffs

vs.

ALBERT/CAROL MUELLER T-A McDONALDS; ALBERT and CAROL MUELLER LTD PARTNERSHIPS; ALBERT MUELLER, Individually; and, CAROL MUELLER, Individually,

Defendants

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY

CIVIL ACTION – CLASS ACTION

NO. 2013-07010

FILED PROthonotary LUZERNE COUNTY 2015 MAY 29 PM 4:15

OPINION

Presently before the Court is Defendants' Motion for Summary Judgment.

By way of background, the Court incorporates herein by reference its Order and Opinion, filed on May 14, 2015, with respect to certifying this case as a class action.

As stated therein, the legal issue at the heart of this matter is whether the Defendants violated Section 260.3 of the Pennsylvania Wage Payment and Collection Law (43 P.S. §260.3) (hereinafter sometimes referred to as the "WPCL") by mandating that their employees receive payment of their wages via a JP Morgan Chase Payroll Card (hereinafter sometimes referred to as "Payroll Card").



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Section 260.3 requires that wages “shall be paid in lawful money of the United States or check.” Plaintiffs assert that since a Payroll Card is neither “lawful money of the United States” nor a “check,” the Defendants’ exclusive use of same to pay wages was a *per se* violation of the WPCL and that, therefore, named Plaintiffs, and all of those similarly situated, are entitled to the damages set forth in §260.9a and §260.10 of the WPCL.

To the contrary, Defendants assert that a Payroll Card is, in a broad sense of the term, “money” and, in addition, that it is also a “check” or at least the “functional equivalent” thereof. Therefore, Defendants conclude, they were in compliance with the WPCL when they mandated that their employees receive payment of their wages via the Payroll Card and they are now entitled to summary judgment in their favor. Upon a review of the plain language of the WPCL, the Court cannot agree.

The Pennsylvania Wage Payment and Collection Law was enacted in 1961 and the last amendment to §260.3 was in 1977. The mandatory language requiring that wages “shall be paid in lawful money of the United States or check” existed in the original version of the statute and was unchanged by the 1977 amendment. 43 P.S. §260.3. Clearly, the Legislature did not contemplate the concept of a payroll debit card when it adopted the language of §260.3 in 1961.

Nonetheless, Defendants argue that since the funds “loaded” on to the Payroll Cards can readily be converted to cash at a bank or an ATM, that those funds constitute “money” for purposes of the statute. However, §260.3 does not simply use the term “money,” rather it uses the phrase “lawful money of the

United States” which has a more specific legal definition than the more general term “money.” The WPCL does not define the phrase “lawful money of the United States,” however, according to *Black’s Law Dictionary* (10th ed. 2014), “lawful money” is “money that is legal tender for the payment of debts.” Further, “legal tender” is the money (*bills and coins*) approved in a country for the payment of debts, the purchase of goods, and other exchanges for value. *Id.* (emphasis added). It is the Court’s view that the drafters of §260.3 had these legal definitions in mind when they used the phrase “lawful money of the United States.”

While, as stated above, the WPCL does not define the phrase “lawful money of the United States,” it does define a “check.” Section 260.2a defines a “check” as “a draft drawn on a bank and payable on demand.” Unfortunately, it does not define a “draft,” however, according to *Black’s Law Dictionary* (10th ed. 2014), a “draft” is “an unconditional written order signed by one person (the *drawer*) directing another person (the *drawee* or *payor*) to pay a certain sum of money on demand or at a definite time to a third person (the *payee*) or to bearer.” In making their argument that Payroll Cards are “checks” or their “functional equivalent,” Defendants’ legal analysis focuses on the fact that the Payroll Cards are issued by a “bank” and are capable of being withdrawn “on demand,” but it ignores the fact that the Payroll Cards are not “unconditional written orders.”

The Court would note that it reaches its conclusion that the Payroll Cards at issue in this case are neither “lawful money of the United States” nor “checks” by applying basic principles of statutory construction and interpreting the plain

language of the WPCL, particularly in the context of what that language meant when the statute was enacted in 1961. The Court is not unmindful, however, that this is apparently an issue of first impression in Pennsylvania and that reasonable minds can differ, particularly where considerations of advancing technology and consumer convenience, as well as the sometimes competing consideration of consumer protection, are all involved. (See generally the Report dated 6/12/2014 and entitled "*Pinched by Plastic: The Impact of Payroll Cards on Low-Wage Workers*" authored by the New York State Attorney General's Office for a discussion of the pros and cons of payroll cards.)

The Court would also note that its own research has revealed that at least half of the states across the country now allow wages to be paid on payroll cards either by statutory amendment or regulations promulgated pursuant to statutory authority and that Pennsylvania has at least one piece of proposed legislation that would amend the WPCL to allow wages to be paid via payroll cards as long as certain conditions are met. See H.B. 2274, 198th Gen. Assemb., 2014 sess. (Pa. 2014) (Referred to Committee on Labor and Industry, May 28, 2014). Importantly, many of the aforementioned state statutes and regulations, as well as the proposed Pennsylvania Legislation, allow use of the payroll cards as one of several options for employees to receive their wages and only with their advance written authorization, unlike the present case where use of the Payroll Cards was mandatory and the exclusive method by which employees could obtain their wages.

Finally, the Court would point out that the ultimate resolution of the legal question involved in this matter will have state-wide implications and that while the WPCL permits a private cause of action under §260.9a, §260.8 vests the Pennsylvania Department of Labor and Industry with the “power to make rules and regulations for the administration” of the WPCL and imposes upon the Secretary the “duty” to “enforce and administer the provisions” of the WPCL. With this in mind, the Court is of the opinion that an appellate court, as well as Pennsylvania employers and wage-earners, could benefit from the Department of Labor and Industry expressing a formal position on the matter.

Accordingly, and for the reasons set forth above, the Court enters the attached Order.

End of Opinion

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