The Nelson A. Rockefeller Center at Dartmouth College
The Center for Public Policy and the Social Sciences

The Class of 1964 Policy Research Shop
—Celebrating 10 Years of Service to New Hampshire and Vermont—

PAYROLL CARDS IN NEW HAMPSHIRE

Examining the Effects of Payroll Card Legislation

Presented to the NH House Committee on Labor, Industrial, and Rehabilitative Services

PRS Policy Brief 1415-13
May 20, 2015

Prepared By:

Ryan Galloway
Ke Zhao
Morgan Sandhu
Mary Sieredzinski
Alexandros Zervos

This report was written by undergraduate students at Dartmouth College under the direction of professors in the Rockefeller Center. Policy Research Shop (PRS) students produce non-partisan policy analyses and present their findings in a non-advocacy manner. The PRS is fully endowed by the Dartmouth Class of 1964 through a class gift in celebration of its 50th Anniversary given to the Center. This endowment ensures that the Policy Research Shop will continue to produce high-quality, non-partisan policy research for policymakers in New Hampshire and Vermont. The PRS was previously funded by major grants from the U.S. Department of Education, Fund for the Improvement of Post-Secondary Education (FIPSE) and from the Ford Foundation and by initial seed grants from the Surdna Foundation and the Lintilhac Foundation. Since its inception in 2005, PRS students have invested more than 50,000 hours to produce more than 130 policy briefs for policymakers in New Hampshire and Vermont.

Contact:
Nelson A. Rockefeller Center, 6082 Rockefeller Hall, Dartmouth College, Hanover, NH 03755
http://rockefeller.dartmouth.edu/shop/ • Email: Ronald.G.Shaiko@Dartmouth.edu

The Nelson A. Rockefeller Center at Dartmouth College
The Center for Public Policy and the Social Sciences

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The use of payroll cards to pay employees has been a topic of contentious debate in recent years. Although many states have already passed laws regulating their usage, current legislation surrounding payroll cards is lacking in New Hampshire. In this report, we investigate the potential impacts of payroll card legislation in New Hampshire by researching the existing research literature, interviewing relevant stakeholders in New Hampshire, and examining the approach of Vermont, New York, Hawaii, and Illinois. We begin by introducing the relevant terminology as well as discussing the Electronic Fund Transfers Act that regulates their usage. This is followed by a literature review on and discussion of the costs and benefits of payroll cards to both employers and employees. On the employers' side, payroll cards can save money and are more cost effective than paper checks; on the employees' side, there is simultaneously a benefit for the unbanked, juxtaposed with unexpected and sometimes burdensome fees. We then discuss the laws regulating payroll card usage in New Hampshire and report our findings from interviews with key stakeholders to understand the qualitative impact of payroll cards in the state. The analysis of New Hampshire also explores the demographics of the unbanked in New Hampshire, a population that will likely be heavily impacted by payroll card legislation. The report concludes by examining case studies of payroll card usage in Vermont, New York, Hawaii, and Illinois in order to draw conclusions about how different payroll legislation may impact businesses and employees in New Hampshire.

1. INTRODUCTION

House Bill 1404 was first introduced in the House on December 16, 2013 by Representative Michael Cahill. Two months later on February 19, 2014, HB 1404 passed the New Hampshire House with a vote of 201 yeas to 104 nays (41 did not vote and 46 were absent) with the adoption of Amendment #0501h. After passing the House, HB 1404 was introduced in the Senate on March 13, 2014, but as of April 17, 2014 HB has put on hold as it awaits the completion of an interim study. Since February 19, 2014, House Bill 1404, a bill relating to payroll cards, has remained unchanged as it awaits report to the Senate floor. In its current form, New Hampshire HB 1404 works to equalize the cost of payroll cards between the employees who receive them and the employers who issue them. It does this by providing protection to employees in order to ensure they are: 1) well-informed about the fees associated with payroll cards, 2) not penalized as harshly if they choose to use payroll cards, and 3) not forced to receive payroll cards as terms of their employment. More specifically, the bill introduced the following provisions:

- Every employer shall pay all wages due to employees within eight days after expiration of eight days
- Employers can only offer payroll cards after employees have declined other payment options (direct deposit and paper check)

- The employer will provide at least 3 free withdrawals up to and including the full amount of the employees payroll card account at ATMs
- Payroll card accounts cannot be linked to any form of credit. This includes: loans against future pay, cash advances, or overdraft protection

The Bill continues in Section II by stating that employers must do the following: Must disclose all known associated fees that accompany the use of a payroll card

- Are not allowed to transfer funds to payroll cards that have expiration dates unless the employer replaces said card 15 days before the aforementioned expiration date
- Are not allowed to mandate the use of payroll cards as a term of possible employment or continuing employment
- Must provide written notice of any changes in the terms or fees of payroll cards. The employer will be responsible for any increase in fees until they provide the aforementioned written consent
- Must allow the employees to discontinue use of their card for no penalties or costs to the employee
- Must provide with an option of receiving payroll account statements either electronically or in the form of paper statements at least every 90 days
- Can close payroll card accounts for inactivity only if they provide 30 days written notice to the employee. If the account is closed, the existing funds must be refunded to the employee at no cost
- Are not allowed to incur fees for a declined transfer; a low balance fee; account inactivity; access to account balance and transaction history online, at ATM of in network of issuer, or any automated system in conjunction with payroll card; any fee not specified by type and amount in the contract between employer and card issuer or services not disclosed to the employee mentioned earlier in the bill (Section IIa)

In the following sections, we provide our working definition of payroll cards and explain the current federal regulation surrounding payroll cards.

1.1 Objective

Our group has been tasked by multiple New Hampshire House representatives to investigate the costs and benefits of payroll cards for both employees and employers. In this report, we will address how various types of NH legislation may influence the use of payroll cards by employers and the resulting impact on employees. Finally, we will attempt to provide some quantitative projections on how payroll card usage may increase or decrease depending on which policies are implemented, as well as explore the impact on key stakeholders in New Hampshire.

1.2 Terminology of Payroll Cards and Prepaid Cards

The term "payroll card" is a subset of the more general term "prepaid card." Prepaid cards function as debit cards, but do not require the holder to have a bank account.[1] Value is added onto the card electronically before it can be used, hence the term "prepaid."[2] A card is "open-loop" when it carries the brand of a major payment card network and is accepted anywhere that brand is useable.[3] If additional value can be added to a card, it is called "reloadable."[4] An additional function of some prepaid cards, and all payroll cards, is the ability to withdraw cash from an ATM. The literature on prepaid cards frequently distinguishes between "general purpose reloadable prepaid cards (GPR)" and "payroll cards."[5] A GPR is a general prepaid card, not necessarily tied to payment or employment. When studying payroll cards, it is important to keep this distinction in mind, as conclusions on prepaid cards in general can be different when looking at just payroll cards. Formal definitions of payroll cards and payroll card accounts are codified by the federal and state governments in statutes and regulations.

1.3 Federal Regulation of Payroll Cards

Regulation E of the Electronic Fund Transfers Act (EFTA) is the principle law on payroll card accounts and most notable federal regulation[6]. Regulation E, §205.2 (b)(2) defines "payroll card account" as:

> an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions), are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person.[7]

These cards are then regulated under §205.18 "Requirements for financial institutions offering payroll card accounts." This section outlines specific requirements for institutions offering payroll card accounts. A few key regulations are: disclosures of fees imposed by the financial institution for fund transfers, periodic access to account history, limited liability protections for unauthorized transfers, and timely error resolutions[8] Each of these requirements is intended to protect the consumer from unexpected fees, unexplained expectations, and possible danger such as losing the payroll card. §205.18 (b) and (c) ensures that consumers without internet access will still have access to their account statements and general account information via telephone or written request. In addition, the limited liability protection provides a way for a consumer to counteract unauthorized charges on their card.

Furthermore, Regulation E states that no "financial institution or other person" can mandate that an employee receive direct deposit into a particular account or at a particular institution.[9] By extending the same rights to payroll accounts as a bank account used for direct deposit, the EFTA makes it clear an employer cannot mandate the use of payroll cards. There must be at least one alternative payment method.

1.4 Payroll Card Usage Nationwide

Payroll card usage is expected to grow in the next few years. The Aite Group projects that there will be 10.8 million payroll cards in use by 2017. These cards will hold a combined value of $68.9 billion dollars as shown in Figure 1. This growth suggests that policies around payroll card usage will affect an increasingly larger proportion of employees. Therefore payroll cards are a relevant topic that should be discussed in New Hampshire, as this is where the future of employee payment is headed.

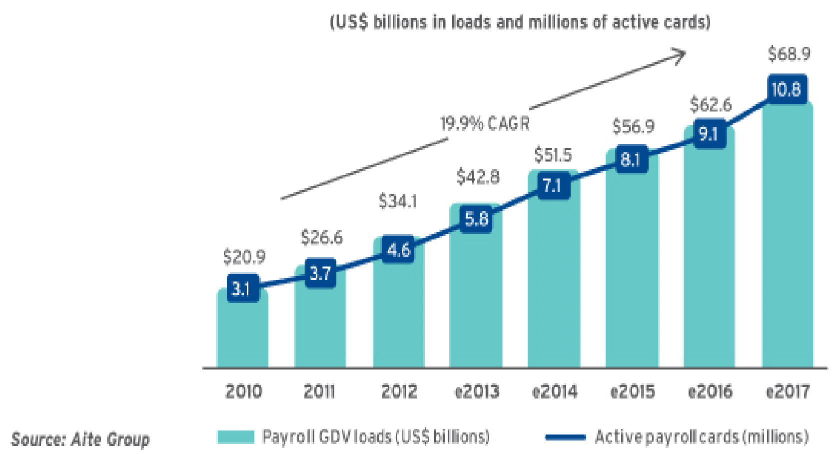

Figure 1: Payroll Card Usage, Past and Predicted[10]

Figure 2, also produced by the Aite group, shows a comparison of employees getting paid via payroll cards versus paper check. This shows a shift in the payment structure of employees, emphasizing the relevance of the statistics shown in figure 1. Payroll cards are not going away. By 2015, they are predicted to be more dominant than paper checks and continue to grow from there.

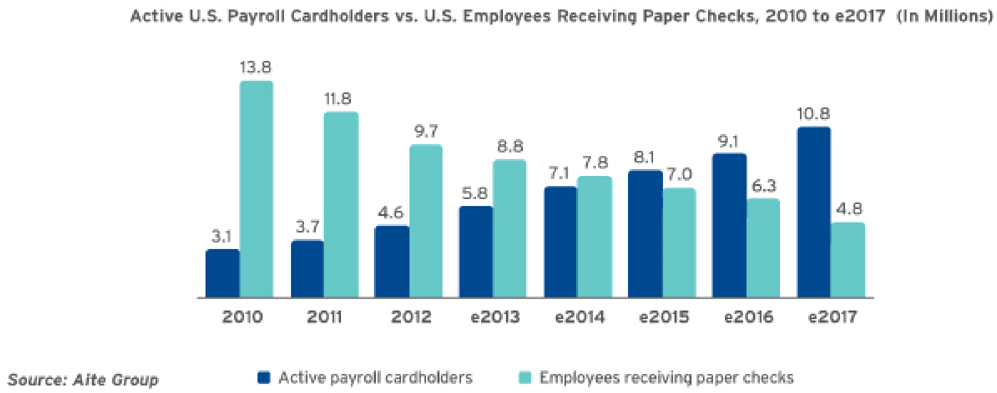

Figure 2: Trends in Payroll Card Usage Compared to Paper Checks[11]

2. EMPLOYER COSTS AND BENEFITS

Payroll cards are a developing alternative payment method that could benefit many employers. The primary and most compelling reason for employers to use payroll cards is the potential cost savings. The downsides or potential costs to employees are rather minimal at this point in time but still something to monitor.

2.1 Cost to Employers

For the most part, payroll cards are a pure benefit for employers. Nonetheless, employers must still weigh the potential costs to using payroll cards. There are several different federal laws, as mentioned in section one, like Regulation E and the Standard Labor Act,[12] that employers must be in compliance with when using payroll cards in their company. More regulation means more compliance and more potential ramifications. For example, if employees are getting paid directly through payroll cards and are charged fees for something such as withdrawing their paychecks from an ATM, this could violate the law. If an employee decided to take a case to court there could be a lot of financial costs to the company.

2.2 Benefits to Employers

For employers, the biggest benefit of payroll cards is cost savings. Issuing paper checks can be expensive. Before payroll cards, employers had no alternative besides direct electronic deposit into a bank account. If an employee did not have a bank account the only option was paper checks. Payroll cards represent an alternative, with a regulation framework that is changing quickly. According to the American Payroll Association, each electronic payroll payment is cheaper than a paper check payment by $2.75.[13] This may seem like a small amount but the savings add up. Most companies have a bi-weekly pay period. Therefore, on average, payroll cards can save a company $233 annually per employee.[14] The savings also depend on the size of the company; the larger the company's payroll list, the greater the savings when the burden of printing paper checks is alleviated.

Having said this, employers must consider the potential risks and magnitude of costs associated with payroll usage and subsequent lawsuits. There have been cases, most notably Gunshannon v. Mueller (2013) in the Pennsylvania State Court, in which an employee sues the company for some violation of the employee's right on how to receive his or her paycheck. If a law in New Hampshire is passed and companies, representatives, and legislators agree on a certain set of rules, companies are unlikely to run into lawsuits. If no law is passed it may be worthwhile to come up with some sort of potential savings scale, depending on how many employees the company has. This would then be used to calculate a base "cost" prediction of a potential lawsuit. Subtracting that "cost" prediction from each potential savings would finally help determine the scale. Thus, the overall benefit of implementing payroll cards would be depend on the size of the business, the number of employees currently being paid via paper check, and the probability of a lawsuit occurring.

The base "cost" prediction would have to be derived from similar case studies above on how much it would cost to lose. Additional research gathering different cost quotes from New Hampshire lawyers, for instance, would be helpful in estimating on how much it would cost to hire lawyers. Our research team attempted to contact the office of Shaheen & Gordon in Manchester[15] as well as the Alfano Law Office of Concord,[16] but could not reach a spokesperson due to the deadline given. We suggest additional attempts to contact law offices as one area of potential future research and data collection.

As stated above however, this is only if no laws are passed and agreed upon. Only then should researchers follow through with this and companies proceed with extra caution.

3. EMPLOYEE COSTS AND BENEFITS

Most payroll card legislation is focused on employee protections, as employees paid with these cards bear more risk. Payroll cards have many unforeseen user fees.[17] In this section, we examine the potential cost of payroll cards to employees including fees associated with fund withdrawals, paper statements, and card inactivity. We then go on to discuss some of the possible benefits employees receive by choosing to be paid with payroll cards

3.1 Cost to Employees

While payroll cards may be a good alternative to people who do not have a bank account, they must be aware of the potential costs that come along with them. These fees are often hidden, which can really start to add up and take a significant amount out of employees' paychecks. Some examples of these types of fees include:

- ATM withdrawal fees
- Paper statement fees
- Card replacement fees
- Card inactivity fees

Often employees are charged these fees because they are not aware of the boundaries, rules, and regulations of their cards. Employees need to make sure that they are able to access their accounts at their place of work. They also need to make sure that they are properly educated and informed about how to use the cards and the rules and regulations that come along with them. If they don't this could violate their rights

3.2 Benefits to Employees

Payroll cards can benefit employees, especially the sixty million Americans who do not have bank accounts because they cannot afford them.[18] They are a money-managing tool, as employees can track usages, check balances, and always know how much money they have. According to research done by MasterCard, the tools that come with payroll cards can save employees over $1,000 a year compared to fee-based money-management tools typically used by the un- and under-banked population.[19] They are more convenient than checks, as you can access your money instantly. If an employee didn't have a bank account and had to go to a bank or another check cashing service every time they needed money that would be a hassle. Payroll cards are also more secure than cash checks, as they can be insured replaced. So employers would not have to worry about their money getting stolen or lost as easily. If properly instructed on how to use your card, with the right program and training, they can be truly beneficial, according to the NCLC.[20]

Payroll cards are also beneficial to employees because they provide services that cash cannot. For example, an employee can pay large bills, such as the electricity bill or mortgage payments much more easy with a payroll card. Employees can use payroll cards online, unlike cash, which makes making payments much easier, quicker, and more efficient.

One big determinant of employee impact appears to be financial literacy. Specifically, how clearly are payroll card fees and regulations communicated to employees? How transparent are card companies about stating their terms of use and fee schedules? When users of payroll cards are familiar with the fees, rules and regulations associated with the cards, the costs to employees become minimal.[21] According to a report commissioned by the New York Attorney General, cardholder employees are often given insufficient information regarding how to obtain their wages without incurring a fee. In contrast, when employers provided detailed fee data, approximately 75 percent of cardholder employees experienced fewer fees.[22]

It is important to understand the magnitude of potential revenue generated for card vendors. According to a 2010 study by the Massachusetts Division of Banks, an employee pays between 2.4 percent to three percent to cash their payroll checks with a check casher. The study concluded that an unbanked employee who makes an annual salary of $26,000 would end up spending $750 in check-cashing fees and money order fees.[23] This amounts to roughly 2.8 percent of their earnings—not an insignificant amount. These studies point to the need for payroll cards to be regulated should they be implemented via statewide policy in New Hampshire.

4. COMPANY USAGE

Payroll cards are utilized differently by different businesses and sectors. Big businesses are far more likely to use payroll cards than small businesses. Likewise, retail and other service industries use payroll cards far more than industrial and agriculture sectors. As research on payroll cards progresses, it is useful to know what industries have a larger stake in payroll cards. Likewise, it is helpful to know what companies are likely to use payroll cards based on their track record in other states. Preliminary interview findings indicate that many small business owners in New Hampshire are unaware of payroll cards to begin with, so the most likely users of payroll cards would be larger corporations that have a long payroll list.

4.1 Important Data

The sector breakdown, both by state and as a nation, is important to understand the impact payroll cards may have in New Hampshire. In the United States, 79.9 percent of the workforce is in the services-providing industry, with 10.2 percent in retail trade specifically.[24] In New Hampshire, the major industry with the highest employment is retail trade.[25] As retailers, especially big box retailers, are more likely to use payroll cards, a high percentage of the workforce in retail trade or other service providing industries creates a more favorable environment for the adoption of payroll cards.

4.2 Companies

Payroll cards are most often used to pay hourly workers, usually by big box retailers or other large chain companies. Some notable companies known for using payroll cards include Taco Bell, Walgreens, Wal-Mart, McDonald's, Home Depot and Time Warner Cable .[26, 27] In New York, the Attorney General's Office conducted a thorough investigation of companies using payroll cards and what effect that has on the companies and the companies' employees.[28] 38 out of 42 companies that were asked for data currently use payroll cards. At the moment, due to the confidential nature of the information provided, the companies remain anonymous. Nevertheless, the report still offers important insights into the impact of payroll card usage in New York. For instance, the report reveals than one employer's payroll card vendor brought in nearly $70,000 in fees for fewer than 5,000 cardholders in one year, over $60,000 of which came from ATM transaction fees. The majority of these ATM exchanges were made by employees to access their wages or check account balances, common demands of which many cardholders were often unaware of the associated fees at first.[29]

With over one-third of employers in New York using payroll card programs with overdraft fees, the potential for card vendors to charge employees significant fees in New Hampshire should be a realistic concern when deciding how best to regulate or encourage payroll card usage. New York legislators have responded by including in their Payroll Card Act a number of regulations to prevent employees from being unfairly taken advantage of due to lack of information on associated fees.

For instance, the Payroll Card Act requires employers to allow employers to choose whether to be paid via card, direct deposit, or paper check; employers cannot impose payroll cards on any unwilling employee. In addition, card vendors are required to provide clear and appropriate notices of terms and conditions, including potential fees and how to avoid them. Finally, the act also prohibits employers from using select types of payroll card programs that charge certain types of fees. These are all provisions that have been included the New York state's Payroll Card Act, which was introduced in February this year by the state Attorney General and is currently sitting in the Senate.

Presently, the biggest payroll card vendor is NetSpend, based on Austin, Texas. NetSpent levies as many as eighteen different fees. According to a 2014 report by CardHub, the average prepaid card charges ten different fees.[30] While NetSpend is therefore a slight anomaly, its success as the most widely used vendor is undeterred. For New Hampshire businesses, it is thus important to consider which card vendor to choose for their employees who are paid by payroll cards.

4.3 Implications for New Hampshire

In New Hampshire, there are a few companies known for using payroll cards that employ a significant share of the population. In the largest 50 employers, by volume of employees, Sam's Club is #39 and Walmart is #40.[31] Walmart's switch to use payroll cards in 2009 was widely publicized as they used an opt-out rather than opt-in system.[32] As the policy research proceeds a possible area of further study would be an interview with Walmart managers in both New Hampshire and in Vermont to see how the current legislation, which is very different, affects use of payroll cards.

Using the previously listed companies as examples, it is easy to see how payroll cards would affect New Hampshire residents. There are 59 McDonalds in New Hampshire.[33] There are 16 Taco Bells[34], 28 Walgreens[35], and 20 Home Depots [36]. Even if these were the only employers to use payroll cards, there would still be a significant impact on residents of New Hampshire. With that said, it is highly likely that there are far more companies utilizing payroll cards. As shown in earlier sections, payroll card use has grown over the past years and projected growth is strong.

Because employers are a key stakeholder in payroll card policies, we spoke with several businesses regarding their current payroll practices and their views of payroll cards. We asked the following list of questions during each interview:

1. Are you aware of payroll cards and what do you think about them?

    We then provided the following standardized explanation if they were not aware of payroll cards: Payroll cards are essentially prepaid cards that employers can use to pay their employees. But with these prepaid cards you have the ability to withdraw cash from an ATM. There are costs and benefits to go along with it, for both employees and employers. For employees, there are fees associated with using this card but also benefits like tracking balances and being more accessible for employees who are unbanked. For employers, using a prepaid card may save you money from not needing to print paper checks.

2. How do you currently pay your employees? Are you aware of alternative ways to pay your employees besides paper checks and payroll cards?

3. Regardless of whether you use the payroll card to pay employees, are you aware of the associated fees of the card?

4. If a bill is passed by the New Hampshire State Legislature that requires you to either give employees the option to receive payroll cards or paper checks, would you support this bill? *Here, we were referring to HB 1404 that was passed by the New Hampshire State House and is currently sitting in the Senate.*

5. Would you feel that the government is justified in regulating how employees are paid?

6. Do you think your employees would be satisfied if they were paid with payroll cards?
7. *For employers who did use payroll cards:* Has your bottom line changed as a result of the implementation of these cards?

Regarding our interviewee selection methodology, we identified five sectors to examine: restaurants, hardware/home improvement stores, drug stores, clothing stores, and hotels/motels. These included both small businesses and larger corporations.

Through a series of short phone conversations with various small business owners, including manager Steven Shorey of Four Aces Diner and owner Ken Stanford of Enfield Hardware, it was made clear that many New Hampshire small businesses do not use payroll cards to pay their employees at present due to lack of awareness about the cards. After explaining the potential costs and benefits to business owners regarding these cards and how they worked, many still responded that they would stick with paying their employees as they currently do. Upon further dialogue, we discovered this was due to both tradition (i.e., "We have always paid our employees this way. Why change now?") and friendliness among a small staff (i.e., "I wouldn't want my employees to switch to payroll cards if they don't want to. We're a small business, so I'd talk to each of them first.")[37]

Additional attempts to contact larger businesses as well as labor interests were also made. However, at time of writing, we are still awaiting replies from Tracy Rousseau the State Employees' Association of New Hampshire, Elliott Berry of the law office of Brian Hawkins, Devon Chaffee of the American Civil Liberties Union (ACLU) of New Hampshire, and representatives of Bennett Law Firm.

5. NEW HAMPSHIRE PAYROLL CARD POLICY

This section of the report presents background information on payroll cards in the context of New Hampshire.

5.1 Current Law

Payroll card usage is defined by 275:42 of Title XXIII Labor and regulated under Section 275:43. A "payroll card" is defined as the "means an access device issued and accepted by a financial institution to access funds from the employee's payroll card account."[38] A "payroll account" is characterized as the following:

> [A]n account directly or indirectly established by an employer on behalf of an employee to which electronic fund transfers of the employee's wages, salary, or other employee compensation are made on a recurring basis. A payroll card account does not include a savings account or a demand deposit account at a financial institution and shall be subject to Regulation E, 12 C.F.R. part 205. Disclosures, periodic statements, or alternatives to periodic statements; notices; error resolution procedures; and limitations on liability, with respect to payroll cards, shall be in accordance with the federal Electronic Fund Transfer Act, 15 U.S.C. section 1693 et seq., and its implementing regulation, Regulation E, 12 C.F.R. part 205.[39]

Most of the requirements listed in 275:43 are implementations of the core protections required by the federal government. Important nuances of New Hampshire's law include: the requirement that all wage options, and their costs, are presented to the employee in "plain language," the requirement that employees voluntarily consent in writing to being paid by payroll cards, the requirement that employees can elect to stop receiving wages by payroll cards without penalty, and that employers cannot require the usage of payroll card accounts as a condition of being hired.[40] These policies define the current state of affairs in New Hampshire regarding payroll cards. The two most recent payroll legislative bills do not seek to alter the definition of payroll cards, but seek to change the requirements on their usage.

5.2 Legislation

Two bills were proposed recently that attempted to change the law in NH regarding payroll card usage. Senate Bill 100,[41] deemed inexpedient to legislate by the House in 2013,[42] removed the requirement that an employer using electronic fund transfers offer the option of being paid by a check. It allowed for wages to be paid by payroll cards after employees were offered the option of being paid by direct deposit. This legislation reflects the argument in the literature that payroll cards are a cheaper means through which employers can pay employees, especially compared to paper checks.

House Bill 1404 takes a different approach to the payroll law of NH. HB 1404,[43] currently under interim study by the senate,[44] seeks to add requirements to the use of payroll cards. These changes would include: a requirement to offer payment by direct deposit and paper checks before payroll cards can be used, the option of periodic account activity statements, protection against fees, and better access to payroll card balance.

In this study, we attempted to investigate both existing literature on payroll cards and the opinions of stakeholders such as business owners and labor unions. Because there is limited information on the specific impact of payroll cards in New Hampshire, we relied primarily on case studies of comparative states such as Vermont, as well as the more in-depth but less-similar states of New York, Pennsylvania, and Massachusetts. Our hope in doing so was to provide qualitative assessments to highlight important demographics or economic measures that can be statistically analyzed in order to produce quantitative conclusions about potential statewide impact of various forms of payroll card legislation.

5.3 Stakeholders Their Demographics, and the Fees They Face

As mentioned in the previous section, a range of stakeholders have commented on the bills that seek to change payroll card policies. Because unbanked individuals are likely the most effected by payroll card legislation, we focus our efforts on reaching business and worker interests that would be most likely to have unbanked workers in New Hampshire. Since payroll cards do not require employees to have a bank account, the literature suggests that those in the United States who do not have a bank account stand to gain from payroll cards. A Federal Deposit Insurance Corporation study found that New Hampshire has the lowest percentage of unbanked households nationally at only 1.9 percent in 2011.[45] This is a decline from 2.2 percent in 2009.[46] However, looking at demographic characteristics, the FDIC statistics show that single female households [5.7 percent], households earning less than $15,000 [10.2 percent], households of age 15-34 years [3.3 percent], and households without a high school degree [7.6 percent] are more likely to be unbanked.[47] These figures are solely for the unbanked and do not take into consideration those who are "underbanked" according to the FDIC study. This exploration, which started from the idea that the unbanked are believed to benefit from payroll cards, prompted us to find quantitative values of the unbanked in NH which leads us to conclude that there are certain demographics that may be impacted disproportionately depending on the type of legislation passed in the state.

Continuing this procedure with other qualitative assessments on payroll cards, we found that a study by Wilshusen, Hunt, van Opstal, and Schneider at the Federal Reserve Bank of Philadelphia. In the report, the authors analyzed a large subset of over 280 million U.S. payroll card transactions in 2010. The analysis was nationwide and indicated that the average payroll card costs a cardholder $7.38 per month in fees. This is the result of $4.29 in fees from the card issuer and $3.09 in fees from ATM surcharges. For payroll cards with direct deposits—those associated with weekly or biweekly direct deposits, typically used for longer periods—the average monthly cost in fees came to $10.72. These fees did not include ones charged or removed prior to the card being issued, only ones subtracted after that card was activated.

From this nationwide study, it appears that fees for employees are simply unavoidable, at least for the underbanked and unbanked who use them. In fact, the study observed that 78.1 percent of cash withdrawals on payroll cards generated a fee in 2010.[48]

A more recent study of another large, but not necessarily representative, subset of payroll cards was conducted by the Kansas City Federal Reserve in 2014.[49] They found that the average monthly fees were $11.00 for general purpose reloadable cardholders, somewhat higher than the $10.72 fee reported by the Philadelphia study. It is unclear, however, whether this represents an increasing cost of payroll card fees over time or simply differences arising from sampling variability.

6. FEDERAL STATUS

As discussed earlier, without any regulation of payroll cards, New Hampshire will still be bound by federal regulation. Section 1.3 explains the existing federal legislation. To better understand the impact of Regulation E, at both the national and the state level, the demographics and data that may affect how payroll cards are used and to what extent they are required to be regulated must be taken into account.

6.1: Importance of Understanding Demographic Data, State by State

Understanding and acknowledging national data trends is important as demographics play a large role in payroll usage. As described above, payroll cards are most beneficial for unbanked workers. Historically the unbanked had no way of paying bills electronically or conducting online business. Now, payroll cards offer an alternative and a huge potential benefit. Demographics also determine the most at risk population. Payroll cards pose the biggest threat to citizens who have lower literacy levels or struggle with English.[50]

Payroll cards are often wrapped up in regulation and financial jargon. Therefore, literacy levels are important.

6.2: Data Analysis

In 2013, in the United States as a whole, 7.7 percent of the population is unbanked; this represents 1 in every 13 households.[51] New Hampshire has a significantly lower unbanked population. In 2013, only 2.9 percent of the New Hampshire population was unbanked.[52]

The unbanked distribution in the U.S. and New Hampshire varies by race and ethnicity. Generally, Hispanic and Black individuals are far more likely to be under-banked than White individuals.[53] This can be seen in the figure 3. In New Hampshire, Hispanic individuals are by far the most likely to be unbanked. This poses a potential risk. If Hispanic individuals are more likely to also have lower literacy, the population that would benefit the most from payroll cards is also the population at greatest risk from payroll cards.

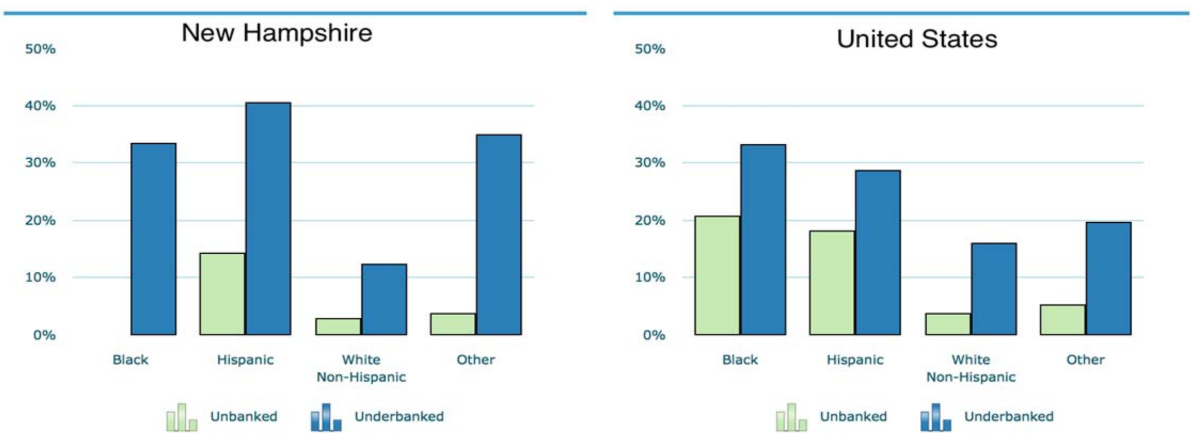

Figure 3: Unbanked and Underbanked Households by Race[50]

This is especially interesting in light of the racial breakdown of New Hampshire versus the United States. In 2013, 17.1 percent of the United States population was Hispanic. In the same year, just 3.2 percent of New Hampshire residents were Hispanic.[55]

7. CASE STUDIES

As New Hampshire considers new legislation and regulatory structures, it is helpful to consider the regulations considered or enacted by other states. In this section, we explore four states that offer a potential and unique insight into the effects of payroll cards. We examine these states either because of their proximity to and economic similarities with

New Hampshire or, in the case of Hawaii and Illinois, because of their ability to pass substantive payroll card legislation that is similar to that of New Hampshire. Hopefully upon examination of these bills, lawmakers will be able to adopt positions taken in existing bills in order to make final judgment on this one.

7.1.1 Vermont and Payroll cards: Why Vermont?

Vermont was an early case of payroll card legislation. Until 2010, payroll cards were banned entirely in Vermont.[56] Then, in 2010, Vermont enacted legislation that allowed payroll cards that were closely monitored and highly regulated. The new law, Act 115, amends the Vermont State Code § 342 to allow an employer to use payroll cards as an alternative to paper checks or direct deposit.

We choose Vermont for two key reasons. First, Vermont has very strict payroll card regulation. It is in line with what has been proposed in New Hampshire in the past. This will allow an easier and more valuable comparison. Second, Vermont has similar demographics to New Hampshire on some of the most germane concerns in this case: ethnic composition and a similar level of how banked the population is.

Demographically, Vermont has similar data to New Hampshire. The unbanked population in Vermont is 3.1 percent (compared to New Hampshire's 2.9 percent).[57] Likewise, Vermont also has a far less diverse population. Individuals of Hispanic descent are just 1.7 percent of the total Vermont population. Finally, and most importantly, Vermont shows the same trends for the relationship between race and banking level. In Vermont, a whopping 42.5 percent of Hispanic individuals are unbanked.[58] For purposes of this comparative case study, it is reasonable to assume that many demographically correlated impacts of payroll card usage in Vermont would result in similar effects in New Hampshire.

7.1.2: Vermont Legislation

In Vermont, the legislation is structured to ensure payroll cards are highly opt-in, as opposed to opt out. The employer must obtain the employee's explicit written consent and fully disclose the terms and conditions of a payroll card option before he or she can begin paying an employee via payroll card.[59] All terms must be fully disclosed, in at least size 10 point font. If the employee is not literate or prefers another language all materials must be provided in the employee's native language. This element should assist with the potential danger to the unbanked Hispanic population.

An employee in Vermont must be able to withdraw cash at least three times without charge and one time where the entire paycheck can be withdrawn safely.

Essentially, Vermont's legislation is structured so that "None of the employer's costs associated with the payroll card account are passed on to the employee, and the employer shall not receive any financial remuneration for using the pay card at the employee's expense."[60] Such regulation appears to be effective for Vermont, as most possible areas of concern are preempted and protected.

7.2: New York and Payroll Cards: Why New York?

Another good state to focus on is New York. Neither New Hampshire nor New York has taken action in regard to payroll cards. Therefore, both are bound exclusively by federal regulation. While there is little formal research about the impact of payroll cards in New Hampshire, New York has been a hub of research on payroll cards. This research was spearheaded by New York Attorney General Eric T. Schneiderman who conducted a thorough investigation of payroll cards and the effect they have had on both employers and employees in New York. The Office of the New York State Attorney General (OAG) asked 38 national and regional employees to submit information on their usage of payroll cards.[61] The OAG then assembled the most pertinent data into a report, "Pinched by Plastic". In a previous section of this report, we spoke about this report in relation to its findings of payroll card fees and the subsequent Payroll Card Act provisions that aim to protect employees from excess charges.

Although New Hampshire and New York have a different demographic makeup, the research of "Pinched by Plastic" is still a valuable resource. A brief overview of the demographics of New Hampshire versus New York shows that while there is variation, there is also overlap. First, New York is on average far less banked than New Hampshire: 8.5 percent of New York's households are unbanked.[62] Accordingly, the proportion of Black, Hispanic, and White unbanked household are all larger in New York than in New Hampshire.

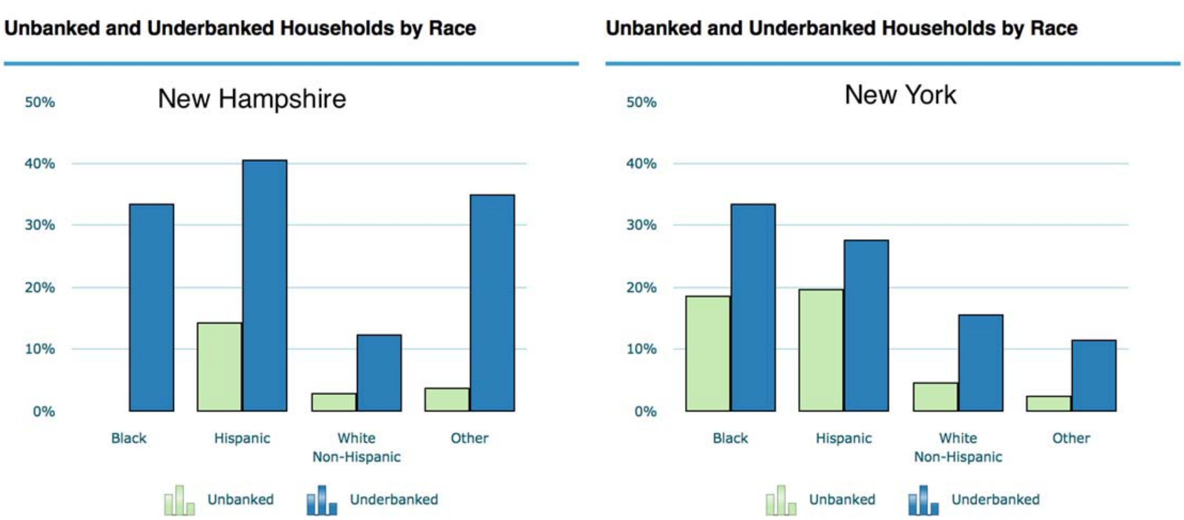

Figure 4: Unbanked Households by Race New Hampshire versus New York. [63]

Figure 4 shows that despite the different distribution of the unbanked, the highest percentage of the unbanked in both states is Hispanic households. Since this is the perhaps the most important interest group cross section, using research from New York is justifiable valuable.

7.2.1 Impact of the lack of legislation in New York

Right now, like New Hampshire, New York has no legislation surrounding payroll cards. The state is bound only by Regulation E. The ramifications of this were widely examined in "Pinched by Plastic". The main findings of "Pinched by Plastic" are as follows [quote]:

1. Cardholder employees receive insufficient and confusing information about how to obtain their wages without paying a fee. Available information frequently comes in small type buried in a cardholder agreement, instead of as a clear, easy-to-read list.
2. Many payroll card programs charge fees for common transactions, including ATM use, point-of-sale transactions, and customer service. An overdraft of as little as $5.00 can trigger a fee as high as $25.00 in programs that charge for overdraft service. Employees without internet access can be charged simply to learn their account balance.
3. Employers sometimes steer or require workers to receive wages by payroll card. Forty percent of employers surveyed did not provide employees the option to receive their wages through a traditional paper check and another 31% discouraged the selection of a paper check.
4. In a subset of employers who provided particularly detailed fee information, three out of four cardholder employees incurred a fee of some kind. In some programs, the average per-employee fees ran as high as $20.00 per month. [64]

These problems persist despite the federal legislation in place. As research on payroll cards continues, we recommend that future researchers delve into why these issues continue to occur despite being illegal according to federal law. Further New Hampshire legislation would benefit by clearly addressing these issues.

7.2.2 Potential Legislative Solutions

In New York, there is currently no legislation that addresses the possible adverse effects associated with payroll cards. Attorney General Schneiderman has proposed the Payroll Card Act, which is intended to counteract the negative effects of payroll cards that still exist within the framework of federal regulation.[65] The primary points of his proposed legislation are requiring election into using a payroll card instead of default enrollment, mandating that employees receive clear and appropriate notice of their payroll card's terms and conditions (including potential fees), and prohibiting certain types of payroll card programs that do not offer a fee-free withdrawal at least once.[66] At time of writing, New York, like New Hampshire, has yet to implement or move forward with the bill.

Evidently, the issues faced by New York and New Hampshire are quite similar as the issues for both arise from loopholes in or disregard of federal regulation.

7.3 *Hawaii and Illinois*

In order to assess the potential merits and shortcomings of payroll card policy changes in New Hampshire HB 1404, this section examines similar bills that were enacted in Hawaii and Illinois. These two bills are HB1814 in Hawaii and HB 5622 in Illinois. While neither of these states shares the exact characteristics of New Hampshire, they can serve as examples of successful similar legislation. In Hawaii, HB 1814 was passed only five months after its proposal and signed into law two months after. In Illinois, HB 5622 passed through both houses three months after its proposal and was signed into law three months later. This points to the fact that legislatures believed that this was an issue that demanded immediate attention and a plausible remedy. In fact, both bills took effect on January 1, 2015.

Currently, the Hawaiian law passed by Governor Abercrombie (D) shares many similarities with the proposed New Hampshire HB 1404. While New Hampshire HB 1404 has been on the table since December 2013 (and is currently undergoing an interim study), Hawaiian HB 1814 passed in less than a year. In its current version, the bill has a number of stipulations that require employers to be earnest with their employees in order to ensure that they are indeed receiving their proper wages. Employees are given the option of receiving pay cards, direct deposit, or paper checks in writing (including fee schedules and any fees associated with third party venders). But employers must make clear the fees associated with the card and are not allowed to base their employment decisions on employee's/ potential employee's preferred payment method. In addition, employees get three free withdrawals from their account every month. With regard to inactivity of accounts, the funds in the pay card do not expire, and after six continuous months of inactivity the employer may close the account as long as there is no penalty imposed on the employee and they get the remaining funds on the card. Lastly, employers cannot require the use of payroll cards and must allow their employees to close the pay card account at any time with no cost/ fine to the employee.

Illinois, another state that has recently passed similar legislation, provides a second example for New Hampshire. For all intent and purpose, the law in Illinois is almost the same as the one in Hawaii except that the employer is required to give employees two free account balance checks per month instead of three. An interesting addition in both the Illinois and Hawaii laws, the employer's obligation ceases sixty days after the employer-employee relationship is terminated. However, the Illinois law continues and states that thirty days prior to the dismissal of an employee, the employer must notify the employee that the terms and conditions might change if the employee continues their relationship with the issuer of the pay card. This acts in opposition to the Hawaiian plan that states that the pay card can be closed. The Illinois bill also doesn't ban inactivity fees, it allows these fees one year after inactivity on the card. Currently, New Hampshire

HB 1404 is more in line with the law from Illinois than the one from Hawaii in regards to this matter. In addition, both the Illinois and Hawaiian bill require the card program to offer the employees the option to check their account balance at any time without incurring a fee.

The passing of these laws marks a turn in the controversial pay card debate. Before, most of the economic burden associated with the cards was placed on the employees and employers were the major beneficiaries of the pay card system. Aite Group, a Boston consulting firm, found that employers prefer using these cards because they save approximately $2.75 each time they electronically load the cards instead of cutting paper check. Now, both the employer and employee share the cost burden of the card, making for a healthier and more productive relationship. Mr. Edward Pei, the Executive Director of the Hawaii Bankers Association, did not think that the numbers of individuals getting direct deposit, pay check, or pay cards have deviated much since the passage of the legislation, but other sources suggest that these numbers will rise given a sufficient amount of time.

8. CONCLUSION

If payroll card legislation is to be introduced in New Hampshire, it must take into consideration both the concerns of employers and employees. While employers see mostly benefit from cutting the cost of having to print checks, switching from paper check to payroll card for employees can be significantly earnings-reducing if the fees and terms of use are not clearly communicated to cardholders. This is the primary concern driving many states' regulations on payroll cards at present, including the Payroll Card Act awaiting report in New York State as well as HB 1404 in New Hampshire. Studies similarly show that users of payroll cards incur significant fees regardless of how clearly the terms of use are stated. Nonetheless, a first step for New Hampshire in regulating the use of payroll cards would be to require greater card vendor transparency. But before regulation is proposed, we stress that the benefits of switching to payroll cards are still ambiguous: on one hand, it seems like a sure cost-cutting measure to businesses. And yet, in interviews with business owners, many stated that they would hesitate to implement them without employees' personal stated preference. Instead, it appears that most employees in New Hampshire small businesses are paid by the traditional direct deposit or paper check methods. That is to say, payroll cards have yet to catch on for those it'd impact most: the unbanked and underbanked, who tend to work for these smaller, local businesses. Ultimately, while analysis of the existing literature shows that payroll cards impose significant costs to employees and potential savings to businesses, our qualitative interviews showed that many business owners are not only unaware of the payroll-card method of paying employees but also more concerned with the satisfaction of their employees than simply chasing the bottom line.

REFERENCES

[1] Wilshusen, Stephanie, Robert Hunt, and James Van Opstal. "Consumers' Use of Prepaid Cards: A Transaction - Based Analysis." Federal Reserve Bank of Philadelphia. August 1, 2012.
[2] Ibid.
[3] Ibid.
[4] Ibid.
[5] Hayashi, Fumiko, and Emily Cuddy. "General Purpose Reloadable Prepaid Cards: Penetration, Use, Fees, and Fraud Risks." Federal Reserve Bank of Kansas City. February 1, 2014.
[6] "Electronic Code of Federal Regulation" http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=12%3A2.0.1.1.6#se12.2.205_118
[7] "Electronic Code of Federal Regulation" http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=12%3A2.0.1.1.6#se12.2.205_118
[8] Consumer Financial Protection Bureau, "CFPB Bulletin 2013-10" pg 1-2 http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf
[9] "Electronic Code of Federal Regulation" http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=12%3A2.0.1.1.6#se12.2.205_118
[10] Aufseeser, Madeline. "Payroll Cards: Ready for the Tipping Point." Ngenuity Journal. Accessed November 3, 2014.
[11] Aufseeser, Madeline. "Payroll Cards: Ready for the Tipping Point." Ngenuity Journal. Accessed November 3, 2014.
[12] "Are Hourly Workers Being Short-Changed? The Truth About Payroll Cards" http://www.forbes.com/sites/halahtouryalai/2013/07/23/are-hourly-workers-being-short-changed-the-truth-about-payroll-cards/
[13] "Feds: Employers can't force payroll debit cards on workers" http://www.today.com/money/feds-employers-cant-force-payroll-debit-cards-workers-8C11312099
[14] "PAYROLL CARDS: THE EMPLOYEE BENEFIT THAT PAYS" https://www.partnersinprepaid.com/pdf/mastercard_payroll_card_white_paper_vf-2.pdf
[15] "Shaheen & Gordon Attorneys at Law" http://www.shaheengordon.com/Corporate-Law-Business.aspx
[16]" Alfano Law Office" http://www.alfanolawoffice.com/
[17] "Feds: Employers can't force payroll debit cards on workers" http://www.today.com/money/feds-employers-cant-force-payroll-debit-cards-workers-8C11312099
[18] "PAYROLL CARDS: THE EMPLOYEE BENEFIT THAT PAYS" https://www.partnersinprepaid.com/pdf/mastercard_payroll_card_white_paper_vf-2.pdf
[19] Ibid.
[20] "Feds: Employers can't force payroll debit cards on workers" http://www.today.com/money/feds-employers-cant-force-payroll-debit-cards-workers-8C11312099
[21] "Pinched by Plastic" http://www.ag.ny.gov/pdfs/Pinched%20by%20Plastic.pdf

[22] *Ibid.*
[23] http://www.mass.gov/ocabr/docs/dob/checkcashreport2010.pdf
[24] Bureau of Labor Statistics, "Employment by Major Industry Sector" http://www.bls.gov/emp/ep_table_201.htm.
[25] Bureau of Labor Statistics, "Largest industries by state, 1990–2013" http://www.bls.gov/opub/ted/2014/ted_20140728.htm.
[26] "Are Hourly Workers Being Short-Changed," *Forbes*, http://www.forbes.com/sites/halahtouryalai/2013/07/23/are-hourly-workers-being-short-changed-the-truth-about-payroll-cards/
[27] Clifford, Stephanie and Silver-Greenberg, Jessica. "Paid via Card, Workers feel Sting of Fees" New York Times, June 30, 2013. Accessed via http://www.nytimes.com/2013/07/01/business/as-pay-cards-replace-paychecks-bank-fees-hurt-workers.html?pagewanted=all&_r=0
[28] New York State Attorney General's Office. *Pinched by Plastic*. By Eric Schneiderman. Albany, NY: US. 2014
[29] *Ibid*.
[30] "Prepaid Cards Report – 2014" http://www.cardhub.com/edu/prepaid-cards-report/
[31] "State Profile: Largest Employees, New Hampshire" http://www.acinet.org/oview6.asp?printer=&next=oview6&id=&nodeid=12&stfips=33&group=2
[32] Mayerowitz, Scott. "Wal-mart to Staff: Bye-bye Paycheck, Hello Debit Card". September 8, 2009. http://abcnews.go.com/Business/wal-mart-employees-debit-cards-paychecks/story?id=8494124.
[33] "McDonalds in New Hampshire". Accessed November 2, 2014. http://www.mystore411.com/store/list_state/17/New%20Hampshire/McDonald's-store-locations
[34] "Taco Bell in New Hampshire". Accessed November 2, 2014. http://www.mystore411.com/store/list_state/87/New%20Hampshire/Taco-Bell-store-locations
[35] "Walgreens Store Locations in New Hampshire". Accessed November 2, 2014 http://www.walgreens.com/storelistings/storesbycity.jsp?state=NH
[36] "Home Depot Locations New Hampshire". Accessed November 2, 2014 http://www.homedepot.com/l/NH
[37] Stanford, Ken. Personal Interview. May 6 2015.
Shorey, Steven. Personal Interview. May 6 2015.
[38] NH Title XXIII LABOR Chapter 275 PROTECTIVE LEGISLATION Payment of Wages Section 275:42 http://www.gencourt.state.nh.us/rsa/html/XXIII/275/275-42.htm
[39] NH Title XXIII LABOR Chapter 275 PROTECTIVE LEGISLATION Payment of Wages Section 275:42 http://www.gencourt.state.nh.us/rsa/html/XXIII/275/275-42.htm
[40] NH Title XXIII LABOR Chapter 275 PROTECTIVE LEGISLATION Payment of Wages Section 275:43 http://www.gencourt.state.nh.us/rsa/html/XXIII/275/275-43.htm

[41] SB 100 – AS AMENDED BY THE SENATE 2013 Session http://www.gencourt.state.nh.us/legislation/2013/SB0100.pdf

[42] "SB 100." New Hampshire General Court - Bill Status System. Accessed November 3, 2014. http://www.gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=906&sy=2013&txtsessionyear=2013&txtbillnumber=SB100.

[43] HB 1404 – AS AMENDED BY THE HOUSE 2014 Session http://www.gencourt.state.nh.us/legislation/2014/HB1404.html

[44] "HB 1404." New Hampshire General Court - Bill Status Symbol. Accessed November 3, 2014. http://gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=2181&sy=2014&sortoption=&txtsessionyear=2014&q=1.

[45] Burhouse, Susan, and Yazmin Osaki. "Appendices H and I of the 2011 FDIC National Survey of Unbanked and Underbanked Households." Federal Deposit Insurance Corporation. September 1, 2012.

[46] Ibid.

[47] Ibid.

[48] Federal Reserve Bank of Philadelphia. *Consumers' Use of Prepaid Cards: A Transaction-Based Analysis*. By Stephanie M. Wilshusen, Robert M. Hunt, and James van Opstal: Philadelphia, PA: US. 2012.

[49] Federal Reseve Bank of Kansas City. *General Purpose Reloadable Prepaid Cards: Penetration, Use, Fees, and Fraud Risks.* By Fumiko Hayashi and Emily Cuddy. Kansas City, MO: US. 2014.

[50] New York State Attorney General's Office. *Pinched by Plastic*. By Eric Schneiderman. Albany, NY: US. 2014.

[51] "2013 FDIC National Survey of Unbanked and Underbanked Households" https://www.fdic.gov/householdsurvey/

[52] "2013 Survey Results for New Hampshire" https://www.economicinclusion.gov/surveys/place-data.html?where=New_Hampshire&when=2013

[53] "FDIC—2013 Household Survey Results" https://www.economicinclusion.gov/surveys/2013household/prepaid-cards-findings/

[54] "New Hampshire vs. United States" https://www.economicinclusion.gov/surveys/place-compare.html?topSelect=State&where=New_Hampshire&x=83&y=2&topSelect2=Nation

[55] "New Hampshire Quick Facts". Accessed November 1, 2014. http://quickfacts.census.gov/qfd/states/33000.html

[56] Abayomi, Olayemi Y., DeSimone, Beth S., and Hochberg, Jeremy W. "State Law Developments in the Regulation of Payroll Cards". The Review of Banking and Financial Services 24 vol. 8. http://www.arnoldporter.com/resources/documents/A&PLLP_TheReviewOfBanking&FinancialServices_0808.pdf

[57] "New Hampshire and Vermont Comparison" https://www.economicinclusion.gov/surveys/place-compare.html?topSelect=State&where=New_Hampshire&x=44&y=9&topSelect2=State&whereelse=Vermont
[58] Ibid.
[59] "Vermont Employers Now Permitted to Pay Wages by Payroll Debit Card" http://www.littler.com/2010/06/articles/wage-payment-issues/vermont-employers-now-permitted-to-pay-wages-by-payroll-debit-card
[60] "Vermont State Statutes" http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=21&Chapter=005&Section=00342
[61] New York State Attorney General's Office. *Pinched by Plastic*. By Eric Schneiderman. Albany, NY: US. 2014 pg 3
[62] "New Hampshire versus New York" https://www.economicinclusion.gov/surveys/place-compare.html?topSelect=State&where=New_York&x=54&y=20&topSelect2=State&whereelse=New_Hampshire
[63] Ibid.
[64] New York State Attorney General's Office. *Pinched by Plastic*. By Eric Schneiderman. Albany, NY: US. 2014 pg 3
[65] Ibid.
[66] Ibid p 3-4.