

What Is Earned Wage Access for Employees?

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Earned wage access (EWA) is a term often heard among employers in the retail and hospitality industries. EWA may be referred to as instant pay, earned income, early wage access, accrued wage access, or on-demand pay. In the UK, the product is referred to by the government as “Employer Salary Advance Scheme.” EWA is a financial service offered to employees (mostly low-wage and hourly workers) where the EWA providers make available to employees through an app some of their accrued wages before the end of their employer’s payroll cycle.

One advantage of EWA often cited by proponents of EWA is that, ideally, it provides employees an alternative to high-cost forms of credit, such as payday loans. Some consumer advocacy groups have warned of fees and other problematic aspects associated with certain EWA services.

Why is there a proliferation of EWA? Proponents of EWA argue that, with almost half of hourly employees in the United States with no emergency savings and nearly 80 percent saving less than \$500, it may help employees meet financial needs in the middle of a pay period. Employers that offer EWA have reported significantly improved recruitment and retention. Some reports have indicated that 78 percent of Millennial and Gen X employees said having EWA would boost their company loyalty. Another survey found that EWA improves retention among younger workers by almost 36 percent. Proponents of EWA argue that employees who are less financially stressed are more productive and that EWA also forces employees to pay attention to their income and spending habits, increasing financial wellness and providing greater control over their money.

State regulations vary regarding EWA. Missouri and Nevada have implemented regulatory standards and licensing requirements for companies providing EWA services. The laws in both states exempt EWA services from their respective state laws that regulate loans and money transmission. EWA service providers in Missouri and Nevada are not regulated as a lender or money transmitter.

EWA is not expressly unlawful anywhere; but laws and regulations on creditors, pay cards, paystubs, wage deductions, wage assignments, and garnishments, among others, may need to be considered and navigated.

Among the legal compliance issues employers need to be concerned with when embarking on EWA are:

- Avoiding becoming employees’ creditor. Most EWA providers only permit employees who choose to participate access to their wages that are “free and clear” of all deductions, taxes, and so on, to avoid paying employees money the provider may not get back and to avoid becoming a “creditor” under consumer finance laws.
- Deductions for a convenience fee for getting paid on-demand are arguably illegal in some states.

- Pay card statutes in many states require access to funds on a pay card be free.
- Paystubs are regulated in some states.
- Written authorization is required for any wage deductions in many states and many states have specific compliance mechanisms for such deductions.
- Deduction statutes in many states expressly state what deductions are permissible. EWA did not exist when these statutes were passed.
- If employees are paying fees directly to an EWA provider, then the provider may need to comply with state wage assignment statutes.
- There are also issues with garnishment and government levy administration that limits the provider's processes.
- Finally, employers need to assure that any deductions do not drop the employee's effective rate below the state minimum wage.

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