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REGULATION OF THE WAGES-ON-DEMAND INDUSTRY

Wage advance products are popular with employees, but raise some novel legal issues for employers and providers. The authors describe how these products work, whether they involve an extension of credit, compliance with state wage and hour laws, and new state legislation that would regulate the industry.

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Over the last several years, a new type of payment product that gives workers immediate access to their wages has been gaining popularity. These products go by a number of names (wages-on-demand, advance-wage payment, earned income access, and wage-based or work-based advances to name a few), but all make it possible for workers to access wages for hours they have worked but for which they are not scheduled to be paid until the end of the pay period. Wage advance products frequently make use of faster-payments technology that allows workers to receive payment within minutes of their request. Studies tell us that many people live paycheck-to-paycheck,¹ and would not be able to cover

an unanticipated expense of a few hundred dollars.² For these workers, immediate access to wages that have been earned but are not due to be paid can be an important benefit. Immediate access products are also popular with “gig workers” who drive for rideshare companies, deliver food and groceries, or perform other piecework tasks and who want to be paid immediately at the end of their shift.³

¹ A 2019 survey of more than 38,000 consumers found that more than 74% of respondents would have at least a “somewhat difficult” time meeting their current financial obligations if their next paycheck was delayed for a week. “*Getting Paid In America*” Survey Results, Am. Payroll Ass’n., <https://www.nationalpayrollweek.com/wp-content/uploads/2019GettingPaidInAmericaSurveyResults.pdf>.

² A report published in 2018 on the economic well-being of American households in 2017 found that four in 10 adults would be unable to cover an unexpected expense of \$400 without selling something or borrowing money. *Report on the Economic Well-Being of U.S. Households in 2017*, Bd. of Governors of the Fed. Reserve Sys., May 2018, <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf>.

³ See, e.g., *Your Money When You Want It*, Uber, <https://www.uber.com/us/en/drive/driver-app/instant-pay/>; *Express Pay*, Lyft, <https://help.lyft.com/hc/en-us/articles/115012923167-Express-Pay>.

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