

# the LEAHY newsletter

For Treasury Management Professionals

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Anniversary

## State Restrictions On The Use Of Payroll Cards – Special Report 61

In this article we are publishing the results of a survey showing how states restrict the use of *payroll cards* for wage payrolls.

The good news is that payroll cards are such a new product that most states have not gotten around to enacting any laws about them.

The bad news is that payroll cards are (at least in our opinion) a form of direct deposit. Thus, payroll cards are bound by the state laws on direct deposit – even though those restrictions do not mention payroll cards. For that reason, we have added those direct deposit restrictions to each state listing in this article.

This duplicates much of the material in our August 2005 article entitled *State Restrictions On Direct Deposit Of Payroll Funds*. We do apologize for that. The only alternative would be for you to need to refer to both issues for each state – a very cumbersome solution.

### What Is A Payroll Card?

Payroll cards (sometimes called paycards) look and function like normal debit or ATM (Automated Teller Machine) cards.

Each participating employee gets a unique payroll card. Each payroll card is linked to a bank account. Every payday the employer uses an ACH (Automated Clearing House) credit transaction to transfer an employee's pay to the bank account linked to his payroll card.

The employee may withdraw the funds at any ATM or point-of-sale location (such as a Walmart or grocery store). A thief cannot withdraw any money if the card is stolen because a unique PIN (personal identification number) is required for all withdrawals. Some employees destroy this protection by writing their PINs on their payroll cards (it's very hard to make products idiot-proof). If a card is lost, the

employee calls a special phone number and the issuing vendor mails a new card.

The issuing vendor mails (or e-mails) each employee a monthly statement showing all account activity.

### Why Offer Payroll Cards?

The biggest reason for employers to offer payroll cards is that they *sharply* reduce the incidence of check fraud by sharply reducing the number of paper checks they create.

No matter how much employers urge their employees to sign up for direct deposit, they cannot change the fact that 16% of the American work force do not have an account at a financial institution (either a bank, credit union or savings and loan). Even if these people wanted to, they could not sign up for direct deposit.

Payroll cards allow employers to offer direct deposit to these unbanked employees because the payroll card provides the required bank account.

### Who Will Pay For The Payroll Cards?

Several bankers have told us that most employers require *their employees* to pay for the costs of the program. (Some states do not allow employers to *require* this – as we will detail below.)

Some employers market payroll cards as a benefit to *employees*. Payroll card vendors can provide the marketing material.

The main benefits for employees are safety and convenience. If an employee doesn't have a bank account, she cashes her paycheck and carries all of her money around all the time. There is a continual risk of loss or theft. With a payroll card, she just withdraws the funds she needs – and leaves the unused money in the payroll card bank account.

### Federal Law On Payroll Cards

Despite what any state law says about payroll cards, employers must abide by what any federal law requires. Luckily, no federal law addresses payroll cards.

There is a federal restriction on direct deposit. U.S. Code (abbreviated USCA) Title 15 Section 1693K. This section  
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says, “No person may ... (2) require a consumer to establish an account for receipt of electronic fund transfers *with a particular financial institution* as a condition of employment or receipt of a government benefit.” (We added the italics for emphasis.)

Since you will be setting up your payroll card program at one particular financial institution, to us this means that you cannot mandate payroll cards.

You could avoid this restriction by requiring employees to sign up for some sort of electronic wage payment – either direct deposit *at financial institutions of their choice* or payroll cards at a financial institution you have selected. This would satisfy the federal law since the employees would have the choice of financial institutions.

## State Laws On Payroll Cards

Below is a listing of the 50 states (and the District of Columbia) and the laws that each has enacted on payroll cards and direct deposit

**Alabama** – The state has enacted no specific restrictions on payroll cards or direct deposit.

**Alaska** – The state has enacted no specific restrictions on payroll cards. Section 23.10.043 specifies that direct deposit is permitted only when “the employee has voluntarily authorized the deposit. All deposits under this section shall be in a bank, savings and loan association, or credit union of the employee’s choice.”

**Arizona** – The state has enacted no specific restrictions on the use of payroll cards. Title 23-351 specifies that direct deposit is permitted “with the written consent of the employee, by deposit on the payday to the employee’s credit at a financial institution of the employee’s choice ...”

**Arkansas** – The state has enacted no specific restrictions on the use of payroll cards. Title 11-4-402 (b)(1)(A) specifies that all employees shall be paid in currency or by check or electronic direct deposit into the employee’s account. (B) specifies that the employee may opt out of electronic direct deposit by providing the employer a written statement requesting payment by check.

**California** – The state has enacted no specific restrictions on the use of pay-

roll cards. Section 213d specifies that direct deposit is permitted only when the “employee has voluntarily authorized” the transaction, which must be deposited in a financial institution “of the employee’s choice.”

**Colorado** – The state has enacted no specific restrictions on the use of payroll cards. Title 8-4-102.2 specifies that direct deposit is permitted “if the employee has voluntarily authorized such deposit in the financial institution of the employee’s choice.”

**Connecticut** – The state has enacted no specific restrictions on the use of payroll cards. Title 31-558-31-71b (a) specifies that direct deposit is permitted “upon an employee’s written request.”

**Delaware** – The state has enacted no specific restrictions on the use of payroll cards. Title 19.1102a specifies that direct deposit is permitted “... Upon written request of employee, an employer may pay such employee all wages due by credit to a bank account designated by the employee.”

**District of Columbia** – The District has enacted no specific restrictions on the use of payroll cards. The District has enacted no laws on direct deposit for *non-governmental* employees. The District has enacted Title 1-611.20, which makes direct deposit *mandatory* for government employees.

**Florida** – Title XXXIII 532.02 covers payroll cards, but merely requires the employer to be liable for payment in “current money of the United States.” Title XXXIII 532.04 (1) specifies that direct deposit is permitted “if such direct deposit has been authorized in writing by the payee and if the payee has designated in writing the financial institution of her or his choice in which such deposit is to be made.” (2) “No employer or payor of wages or salary shall terminate the employment of any employee or payee solely for refusing to authorize such direct deposit of wages or salary.”

**Georgia** – The state has enacted no specific restrictions on the use of payroll cards. Section 34-7-2(3) specifies that direct deposit is permitted “with the consent of the employee...”

**Hawaii** – The state has enacted no specific restrictions on the use of payroll cards or direct deposit.

**Idaho** – The state has enacted no specific

restrictions on the use of payroll cards. Title 45-608 specifies that direct deposit is permitted if the “employee has voluntarily authorized such deposit.” The funds must be deposited “in an account ... of the employee’s choice ...”

**Illinois** – The state has enacted no specific restrictions on the use of payroll cards. Section 820 ILCS 115/4 specifies that direct deposit is permitted as long as funds are deposited in a “financial institution designated by the employee. No employer may designate a particular financial institution ... for the exclusive payment or deposit of a check for wages.”

**Indiana** – The state has enacted no specific restrictions on the use of payroll cards. IC 22-2-4-1(b) specifies that direct deposit is permitted as long as funds are deposited in a “financial institution designated by the employee.”

**Iowa** – The state has enacted no specific restrictions on the use of payroll cards. Title III - 91A.3(2) specifies that direct deposit is permitted if the “employee has agreed in writing.”

**Kansas** – The state has enacted no specific restrictions on the use of payroll cards. Chapter 44-314(a) specifies that direct deposit is permitted “with the written consent of the employee, by electronic deposit to an employee’s account at a financial institution.”

**Kentucky** – The state has enacted no specific restrictions on the use of payroll cards. The state has authorized direct deposit for state employees, but has enacted no laws on direct deposit with other employers.

**Louisiana** – The state has enacted no specific restrictions on the use of payroll cards. The state has authorized direct deposit for state employees, but has enacted no laws on direct deposit with other employers.

**Maine** – The state has enacted no specific restrictions on the use of payroll cards or direct deposit.

**Maryland** – The state has enacted no specific restrictions on the use of payroll cards. Section 3-502(d) specifies that an employer may use direct deposit with “an authorization of the employee.”

**Massachusetts** – The state has enacted no specific restrictions on the use of payroll cards. Chapter 167B:7 specifies that “No  
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person may: ... (2) require a consumer to accept an electronic fund transfer service ... as a condition of employment ...” “... the consumer shall have the choice of selecting the financial institution to which the transfer shall be made ...”

**Michigan** – Chapter 408.476.6(3) specifies that “An employer or agent of an employer shall not issue a payroll debit card to an employee under subsection (1)(d) without the full, free, and written consent of the employee, obtained without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the payroll debit card. *However, an employer paying wages by payroll debit card to one or more of its employees as of January 1, 2005 may pay wages to any of its employees by payroll debit card without obtaining the consent described in this subsection.*”

**Minnesota** – The state has enacted no specific restrictions on the use of payroll cards. Chapter 177.23-4 specifies that an employee who does not want direct deposit must make a “written objection to the employer.”

**Mississippi** – The state has enacted no specific restrictions on the use of payroll cards. The state has enacted no laws on direct deposit.

**Missouri** – The state has enacted no specific restrictions on the use of payroll cards. The state has authorized direct deposit for state employees, but has enacted no laws on direct deposit with other employers.

**Montana** – The state has enacted no specific restrictions on the use of payroll cards. Title 39-3-204(2) specifies that direct deposit is permitted “if the employee has consented in writing or electronically ... However, an employee may not be required to use electronic funds transfer or similar means of direct deposit as a method for payment of wages.”

**Nebraska** – The state has enacted no specific restrictions on the use of payroll cards. The state has enacted no laws on direct deposit.

**Nevada** – The state has enacted no specific restrictions on the use of payroll cards. NRS 608.120 (1) specifies that direct deposit is permitted if “the employee has agreed in writing ...”

**New Hampshire** – The state has enacted no specific restrictions on the use of payroll cards. Title XXIII 275:43 1(b) and (c)

specify that the employer must have the “written authorization of the employee to banks of the employee’s choice.” Direct deposit must be “at no cost to the employee.”

**New Jersey** – The state has enacted no specific restrictions on the use of payroll cards. Title 34:11-4.2a specifies that direct deposit is permitted with the consent of the employees.

**New Mexico** – The state has enacted no specific restrictions on the use of payroll cards. Section 50-4-2 B specifies that direct deposit is permitted with the “voluntary authorization of the employer, employee and financial institution.”

**New York** – The state has enacted no specific restrictions on the use of payroll cards. Section 192.1 specifies that “No employer shall without the advance written consent of any employee directly pay or deposit the net wage or salary of such employee in a bank or other financial institution. (2) This section shall not apply to any person employed in a bona fide executive, administrative, or professional capacity whose earnings are in excess of six hundred dollars a week, nor to employees working on a farm not connected with a factory.”

**North Carolina** – The state has enacted no specific restrictions on the use of payroll cards. The state has enacted no laws on direct deposit.

**North Dakota** – Chapter 34-14-02 specifies that the funds must be in a “deposit that is insured by the federal deposit insurance corporation or national credit union administration. Before paying wages an employer must have deposited with the issuer funds in an amount at least equal to the wages due from the employer to each employee whose wages are being paid through a stored value card *and any account fees that are charged to the employer by the issuer.*” Chapter 34-14-02 specifies that employees may be paid “with direct deposit in the financial institution of the employee’s choice ...”

**Ohio** – The state has enacted no specific restrictions on the use of payroll cards. The state has authorized direct deposit for state employees “upon the written authorization of the employee”, but has enacted no laws on direct deposit with other employers.

**Oklahoma** – The state has enacted no specific restrictions on the use of payroll

cards. The state has enacted no laws on direct deposit.

**Oregon** – The state has enacted no specific restrictions on the use of payroll cards. Chapter 652.110 specifies that “An employer and an employee may agree to authorize an employer to deposit without discount wages due the employee in the employee’s account in a financial institution ... in this state.”

**Pennsylvania** – We believe that the Commonwealth has enacted no laws on the use of payroll cards or direct deposit.

**Rhode Island** – The state has enacted no specific restrictions on the use of payroll cards. Title 28-14-10.1(a) specifies that direct deposit is permitted “upon written request ...” of an employee. (b) “If more than one employee to whom a payment is to be made designates the same financial organization, the disbursing officer shall make the payment by sending to the organization a check or credit that is drawn in favor of the organization for the total amount designated by those employees and by specifying the amount to be credited to the account of each of those employees.”

**South Carolina** – The state has enacted no specific restrictions on the use of payroll cards. Title 41-10-40 (B) specifies that “An employer may deposit all wages due to the employee’s credit at a financial institution which is doing business in the State and is insured by an agency of the federal government. When an employee’s wages are paid by deposit at a financial institution, he must be furnished a statement of earnings and withholdings. Any wage deposit plan adopted by an employer shall entitle each employee to at least one withdrawal for each deposit, free of any service charge.”

**South Dakota** – The state has enacted no specific restrictions on the use of payroll cards. Title 60-11-9 specifies that “An employer may pay wages by check, cash, or direct deposit to the employee’s bank account, unless an employer and employee agree to another form of payment.”

**Tennessee** – The state has enacted no specific restrictions on the use of payroll cards. The state has enacted no laws on direct deposit.

**Texas** – The state has enacted no specific restrictions on the use of payroll cards. Chapter 61.017(5) specifies that direct de-  
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posit (and any other “reasonable” payment method) is permitted when “authorized by the employee in writing.”

**Utah** – The state has enacted no specific restrictions on the use of payroll cards. Title 34-28-3. 1d(iii) specifies that direct deposit is permitted. 3(a) An employee may refuse to accept direct deposit except when (b)(i) the employer’s federal employment tax deposits were at least \$250,000 in the previous calendar year, and (ii) at least two-thirds of the employees have their wages paid by direct deposit. 3(c) “An employer may not designate a particular depository institution ...”

**Vermont** – The state has enacted no specific restrictions on the use of payroll cards. Title 21-5-2-342 (d) specifies that direct deposit is permitted “with the written authorization of an employee ...”

**Virginia** – The state has enacted no specific restrictions on the use of payroll cards. Title 40.1.29(B)(iii) specifies that direct deposit is permitted “into an account in the name of the employee at a financial institution designated by the employee ...”

**Washington** – The state has enacted no specific restrictions on the use of payroll cards or direct deposit.

**West Virginia** – The state has enacted no specific restrictions on the use of payroll cards. Chapter 21-5-3 specifies that direct deposit must “be agreed upon in writing between the employee and [employer], which agreement shall specifically identify the employee, the financial institution, the type of account, and the account number. Provided, however, that nothing herein contained shall be construed in a manner to require any person, firm, or corporation to pay employees by depositing funds in a financial institution: ...” Oddly enough, this Section applies to “Every person, firm or corporation doing business in this state, *except railroad companies* as provided in section one of this article ...” (Italics added.)

**Wisconsin** – The state has enacted no specific restrictions on the use of payroll cards. The state has enacted no laws on direct deposit.

**Wyoming** – The state has enacted no specific restrictions on the use of payroll cards. Title 27-4-101 (b) specifies that direct deposit is permitted “if the employee has voluntarily authorized such deposit.”

## How To Comply With State And Federal Laws

We have developed an easy way to run a *national* payroll card/direct deposit program and still comply with *almost all* of the state and federal laws. Just follow these five rules:

1. Allow employees to choose whether they will be paid by direct deposit (at the financial institution of their choice) or payroll card. Note that Oregon and South Carolina require that the direct deposit funds be sent to a financial institution within the state. We seriously doubt that this law is enforced and suspect that it is one of those quaint laws that fill the law books. (San Francisco law still prohibits residents from piling horse manure more than six feet high at street corners.)
2. Make the program *voluntary* for employees. Some states allow employers to make it mandatory, but very few employers would want to incur their employees’ resentment by doing so.
3. Make the program mandatory for *job applicants*. Almost all of the federal and state restrictions apply to *employees*. *Job applicants* are not employees until after they are hired. Applicants who object to the electronic payment program would be told that it is company policy. In practice, very few applicants are going to reject jobs because they object to direct deposit. You could have a policy of waiving the requirement if an applicant protests too much. With normal employee turnover, your direct deposit participation will approach 100% in a few years. Massachusetts law does prohibit this. Michigan law absolutely prohibits using “intimidation, coercion, or fear of discharge or reprisal for refusal to accept the payroll debit card” – unless you started your payroll card program after January 1, 2005.
4. Have employees enroll in the program *in writing*.

5. Pay for the costs of the payroll card program. Only one state – North Dakota specifically requires the employer to pay for the cost of the payroll card program. However, several state laws on direct deposit require the employer to pay any direct deposit charges levied by the *employees’* financial institutions. Although it is open to interpretation, we think this means that the employer should pay the costs of the payroll card program.

These five simple rules will keep you legal in 49 states and the District of Columbia. Rhode Island imposes one other very odd requirement. Rhode Island requires an employer to send only *one* ACH credit transaction per financial institution. This one credit would include the *combined pay* of *all* employees who use that institution. The law instructs the financial institution to separate the amount due to each employee and to credit the proper amount to each employee’s account.

Whoever drafted Rhode Island’s law did not realize that the ACH system does not work this way. The ACH rules require an employer to send a *separate* ACH credit transaction for each employee’s pay. We would recommend that employers ignore this law. When we called the state labor department in 1999, a representative told us that this provision was not being enforced and that no one else had ever questioned it. We have not called since then because we believe in letting sleeping bureaucrats lie.

## Summary

The costs of running a payroll card program are far less than the hassle you will endure if you are the victim of a check fraud scheme.

A payroll card program also allows you to get out of the business of printing and transporting large numbers of checks each pay period.

Although very few state laws specifically address payroll cards, you still are bound by the state laws on *direct deposit*. While the individual state laws are bewildering, you can comply with them by ignoring the actual laws and following our five easy rules.



# Letter to the Editor



## Improving Your Direct Deposit Enrollment

*Editor's note: In early-December 2005 a corporate subscriber to an AFP Discussion List commented that 98% of the corporation's employees were on direct deposit.*

*We asked how the corporation achieved this. After all, you probably couldn't get 98% of your employees to recite the Pledge of Allegiance.*

*Another corporate posted the following wonderful suggestion on how to convince employees to sign up for direct deposit.*

Another convincing argument is natural disasters. During our Hurricane Katrina evacuation, those employees on direct deposit received their paychecks with no delay. We had several employees (long-time because all new employees are required to have direct deposit) who went several weeks without being paid because we had no way of getting in contact with them.

Sincerely,  
Donna L. Johnson  
Assistant Treasurer  
International Shipholding

*Additional editor's note: A speaker at the 2003 AFP conference mentioned*

*that his organization had persuaded its employees (and the union) that direct deposit should be **mandatory**. The company's largest plant had been cut off for a week by a large snow storm. Naturally, the employees' pay checks could not be delivered.*

*Afterward, management explained to the employees and the union that the workers on direct deposit had received their pay on time. Management pointed out that **everyone** would have been paid on time if they all had been on direct deposit. The union and the employees agreed and allowed the organization to make direct deposit mandatory for all employees.*



# Reading Material



## 2005-2006 Phoenix-Hecht Blue Book Of Bank Prices Phoenix-Hecht Price: \$495

Phoenix-Hecht (P-H), well-known for its surveys of lockbox mail times, has published the 18th annual edition of its *Blue Book Of Bank Prices*. This book summarizes the prices that the largest U.S. treasury management banks charge corporate customers for 81 bank services (such as controlled disbursement notification and outgoing wire transfer). In this book P-H is reporting on 24 of these services for the first time.

The *Blue Book* shows the average prices charged by groups of banks. A corporate could use the *Blue Book* to compare her banks' service charges for, say, controlled disbursement notification, to the average price charged by northeast banks, southeast banks, midwest banks, western banks, money center banks or all banks nationwide. She could *not* use the *Blue Book* to determine which bank had the lowest prices.

The *Blue Book* can help corporates who pay for services with *fees* – but not those who pay with *balances*. P-H would need to publish a second much thicker book to calculate average prices

based on the different earnings credit allowances each bank uses.

To prepare this edition of the *Blue Book*, P-H collected information from 2,462 bank account analysis statements contributed by 986 treasury managers at large corporations with at least \$100 million in annual sales.

The *Blue Book* calculates that the average list price for a service increased 2.7% in 2005. The *Blue Book* notes that banks base their price increases on the Consumer Price Index (CPI) inflationary increase for the *previous year*. Usually these increases correlate within half a percent. The details of this are shown in the following table.

Year	Avg List Price Incr	CPI From Previous Year
2005	2.7%	3.3%
2004	2.4	1.9
2003	4.3	2.4
2002	4.8	1.6
2001	3.4	3.4

The bank services with the *largest price increases* in 2005 were:

- Branch issued coin rolls (11.4% increase);
- Retail lockbox item (9.5% increase);

- Deposit reconciliation maintenance (9.1% increase); and
- Lockbox keying (8.5% increase);

The *Blue Book* shows the average bank list price for each service (actually, the average of the *highest list prices* corporates were charged for each service) and the *average price* corporates paid. Actual list prices themselves are not that relevant because banks offer substantial discounts to attract or to keep customers' business.

The bank service prices that were *most deeply discounted* in 2005 were:

- Account reconciliation input transmission item (60% discount);
- Return item redeposit (50% discount);
- Account recon input transmission per transmission (50% discount); and
- Account recon output transmission item (50% discount).

The bank service prices that were the *least discounted* in 2005 were:

- ACH tax payment (16.8% discount);
- ACH concentration item (16.7% discount);
- Balance reporting – non-specific (16.7% discount); and

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- Ledger overdraft fee (15.0% discount).

In 2005 banks offered discounts to corporate customers 40% of the time. This was a drop of 2.8% from 2004. The average discount from list price dropped 0.5% to 34%.

Remember that for some bank services (such as check deposit fees) the bank price is only a small part of the entire cost equation. If you deposit large-dollar checks, a bank's check availability times could be much more important than its deposit fees. A bank that charges *higher* deposit fees but offers *faster* availability times could be a better choice than one with *lower* fees but *slower* availability times. If you do not agree, *Newsletter* will be delighted to offer you very low deposit fees on your \$multi-million checks. For your convenience all funds will be available on the first business day of the following *month*.

Ironically, P-H's bank pricing information is not that important to almost half of

the corporates. 41% of the respondents indicated that they chose their banks based on *credit requirements*. Then they give those banks their cash management business. 57% of the respondents said they would be more likely to move their cash management business if their banks reduced or removed its credit commitment.

### Bank Price Calculator Available

Phoenix-Hecht also has developed a web-based Pricing Calculator that corporates may use to determine what prices they should expect to pay for a particular bank service. The Calculator bases its calculations on the information from the 2,462 bank account analysis statements P-H used to prepare the *Blue Book*.

This Calculator could be extremely useful to you when you are trying to determine whether a bank's prices are reasonable (or unreasonable).

P-H offers a free version of the Calcula-

tor at its web site ([www.phoenixhecht.com](http://www.phoenixhecht.com)). To use this demo you specify the state in which the service is located (e.g., Wyoming), the average dollar amount of your monthly non-credit service fees and the bank service for which you want pricing information. (The demo is restricted to lockbox services.) After you enter some volume and dollar information, the Calculator searches its database to determine what other corporates have paid. The Calculator then provides a range of prices.

P-H is offering a full-service version of this Pricing Calculator to those who purchase the *Blue Book* and pay an additional \$149.

You may order the *Blue Book* or the Calculator from:

Phoenix-Hecht  
PO Box 13628  
Research Triangle Pk, NC 27709  
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This article is our annual caution about copying *Newsletter* materials.

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We rarely have problems with *Newsletter* subscribers copying material. However, non-subscribers are a different story. Several years ago we had to cancel all the subscriptions of a *very* major bank because a non-subscriber was making

many photocopies and mailing them to bank offices throughout the country. This was a deliberate decision by a banker who wouldn't dream of robbing a gas station, but didn't view his actions as stealing from *Newsletter*.

Despite what many people believe, the copyright laws apply to everyone, including government agencies, schools and non-profit organizations.

Another newsletter publisher printed his copyright notice on page one and added "Federal copyright law prohibits unauthorized reproduction by any means and imposes fines of up to \$10,000 for violations." On the last page of his newsletter he offered a "\$500 reward for information on illegal photocopying." The notice continued, "It is illegal under Federal copyright law (17 USC 101 et seq.) to reproduce by any means this newsletter for any purpose without the publisher's permission. Not for routing. Not for internal purposes.

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Several newsletter publishers have obtained awards of tens of thousands of dollars from corporations that did not prevent employees from copying material. Many publishers give substantial rewards to the anonymous corporate insiders who tip them off.

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