

***Hiring to Firing Podcast — Before You Front the Funds: Benefits and Pitfalls of Earned Wage Access Tools (Crossover Episode With *Payments Pros – The Payments Law Podcast*)***

**Speakers:** Tracey Diamond, Emily Schifter, and Carlin McCrory

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**Tracey Diamond:** So, Emily, since our episode today is about the Earned Wage Access (EWA) product where employees could get access to their earned wages before payday, I thought it would be fun to talk a little bit about TV shows and movies and pop culture that just talks about money. So, the very first one that came to mind, of course, is “Show me the money!” from *Jerry Maguire* - what do you have?

**Emily Schifter:** I think of *Billions*, which is maybe a little bit more... It's money, but it's stocks and investments. And certainly lots of dollars.

**Tracey Diamond:** Lots of money. Yeah.

**Emily Schifter:** And I know we were thinking ABBA earlier, right?

**Tracey Diamond:** Right, and Money, Money, which is now going to be in my head for the rest of the day. That's right.

**Emily Schifter:** Well, that's a perfect lead-in to our episode. Today we are doing a

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special crossover episode with the Payments Pros podcast. We've got Carlin McCrory joining us from our financial services group to talk about the emerging technology of Earned Wage Access and all of the pros and cons and regulatory issues and gray area inherent in it. So, stay tuned and we hope you will let us know what you think after you listen in.

[BEGIN EPISODE]

**Tracey Diamond:** Welcome to *Hiring to Firing*, the podcast. I'm Tracey Diamond, a labor and employment partner with Troutman Pepper Locke, and I'm here with my partner and co-host, Emily Schifter. Together we tackle all employment issues from hiring to firing.

**Emily Schifter:** Today, we are thrilled to welcome our guest Carlin McCrory, a regulatory and compliance attorney at our firm who sits just a few floors away from me here in our Atlanta office. In her spare time, Carlin also co-hosts the podcast *Payments Pros*. So welcome, Carlin, and thanks so much for joining us. Can you start by telling us a little bit more about your background and your practice?

**Carlin McCrory:** Yeah. Thanks so much, Tracey and Emily for having me today. Really appreciate it. I focus on regulatory and compliance work for payment processors,

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financial institutions, fintech, and other financial services companies. That really runs the gamut from agreement reviews to money transmission to the Nacha rules and card network rule compliance.

**Tracey Diamond:** Carlin, it's so nice to have a fellow podcaster here with us.

**Carlin McCrory:** Yeah. I'm looking forward to it.

**Tracey Diamond:** So, we're glad Carlin is able to join us today because we're going to tackle a complex regulatory question in an emerging area, and it's called Earned Wage Access, sometimes shortened to EWA or referred to as on-demand pay. So, in its simplest terms, EWA products promise the ability of employers to offer their employees the chance to get some of their pay immediately after they've earned it, right away, rather than waiting until payday.

**Emily Schifter:** I've had the chance to work with Carlin on several projects and matters related to this area, different products, services, and questions that our clients have had. Of course, they can raise all sorts of regulatory issues from a consumer finance, banking, payments, all of those areas perspective. But we've gotten to work together because they also raise potential employment law and HR compliance issues. So, since this is kind of an emerging area, we thought it would be a great topic for us today, especially as more and more products are introduced, more HR departments are

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considering them or even hearing requests from their employees to introduce them. So, Carlin, can you start us off by giving us just a basic overview of EWA and the types of products and services that exist in this space?

**Carlin McCrory:** Yeah. So, as Tracey said, Earned Wage Access generally allows employees to request or receive payment for time already worked, which they may request and then receive instantly or shortly thereafter. Then the employees have to repay that amount, which could be either subtracted from their next paycheck, or it could be a direct deduction from their bank account. And there's a distinction there is that the program may be what we call employer-integrated, where the deduction comes from payroll, or it could be direct to consumer, where a provider partners directly with the consumer and the employer isn't involved. And then the deduction occurs from wages that are deposited into the bank account directly. And then an employee can usually request through an app or a website, wages to be pushed to a debit card, a bank account, it could be a prepaid card, or some other method of payment so they have access to those early wages.

**Carlin McCrory:** And there may or may not be a fee for employees associated with the product. So, a fee could be associated with, for instance, expedited funds availability, or it could be for something like a tip for the early access to wages, which we'll discuss a little bit more later. And then we already discussed the difference between third-party companies offering these, which could be direct to consumer or employer-integrated, as

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I just said. But it could also be employers offering this directly to their employees without integrating with a third-party provider, which again, we'll dive into some of the details in a little bit.

**Emily Schifter:** So, while this technology is new, many of our listeners are likely familiar with the concept of a payday loan, giving a loan to an employee to see them through until they get paid. And sometimes, of course, an employer might simply offer an employee an advance, such as I'm describing before, on an informal basis. How does a payday loan differ from the Earned Wage Access that we're talking about, Carlin?

**Carlin McCrory:** So, EWA products are designed to give early access to a portion of wages that are already earned but haven't yet been paid, whereas payday loans are exactly that. They are loans, they're amounts not yet earned. So, the question of whether an EWA product still constitutes a loan is not one without complications as there are a couple states who have classified EWA products within their small loan law, and we'll talk about that more as well.

**Emily Schifter:** It's so interesting to me. I think we've always assumed it's you get paid every other week or sometimes every month or even on Fridays. Payday is Friday. And when I first heard about these products, my first reaction is, well, gosh, why haven't we thought about this? But there's probably, there's industries where people do get paid every day. So, I can definitely understand why an employee might want this benefit.

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They've already done the work. And of course, getting paid earlier can help bridge the gap between their paychecks so they can weather unexpected expenses better, or as inflation makes just general cost of living go up, it gives them maybe a little more control over their finances.

**Carlin McCrory:** Particularly in those states where employers are allowed to pay just once a month, where it's a pretty long period of time between paychecks.

**Emily Schifter:** No, exactly. And we talked about sort of the informal advances and certainly employers will do that, but it can be tricky and how do you deal with that as a policy? So, having a consistent product like this where employees get to be the one saying, I'm going to request it on demand, can sound like a great solution. But there's counter arguments too. It could cause some HR complexities and add complications to payroll. And of course, employers are always asking themselves when they introduce something new, especially when it has to do with pay, there's always going to be the potential for risks and regulatory confusion. So, what considerations do they need to keep in mind if they're opting in? So, that brings us to our show for today's episode. As always...

**Carlin McCrory:** It's always about the show.

**Emily Schifter:** It is always about the show and it's always about reality show, pick the

theme on the outline.

**Tracey Diamond:** So, today we're pulling clips from the reality show Shark Tank. And for those who are not familiar, it's a show that highlights entrepreneurs and beginning businesses who come to pitch a panel of angel investors called the Sharks to get their investment and grow their business. So, the Sharks include a lot of well-known investors, successful business people, Mark Cuban, Barbara Corcoran, Kevin O'Leary, who are successful business owners in their own right and are now investing their own money to help others. But it is their own money. So, they ask tough questions of the individuals pitching to them and sometimes give some pretty harsh feedback. Some entrepreneurs on the show receive multiple offers as the Sharks bid against each other for what they see as the next success story, while others leave empty-handed. So, let's listen to our first clip, talking about a new technology product where Shark Mark Cuban made what was then the largest offer in the show's history to the dating app Coffee Meets Bagel.

[BEGIN CLIP]

**Mark Cuban:** Let me ask you a question. If I offered you \$30 million for the company, would you take it?

**Contestant:** No.

**Mark Cuban:** Okay.

**Contestant:** I would not be taking it because we see, we see this business going, growing as big as match.com. And you know how much revenue they're generating? \$800 million a year. They're becoming a billion-dollar revenue company and we think this model and the product has potential to be as big as Match.

**Robert Herjavec:** He offered you \$30 million and you didn't even flinch.

**Mark Cuban:** She should feel confident. It's a newer, ephemeral version of Hot Or Not, which is brilliant. But I don't know how protectable that is. While I give you total credit and I think you guys have done some brilliant things, I don't think the risk reward is there for me and for those reasons. I'm still out.

**Barbara Corcoran:** Good luck.

**Contestant:** Thank you.

**Mark Cuban:** Excellent presentation.

**Contestant:** Well, you know what they say, like in dating, never settle. While \$30 million may sound like a lot of money, you wait, Mr. Mark Cuban, because this baby is going to explode.

[END CLIP]

**Emily Schifter:** So, spoiler alert. After shocking everyone by turning down this historic offer, the founders ended up securing millions in other funding after the fact.

**Carlin McCrory:** So, I guess it was a good call on their part, huh?

**Emily Schifter:** So, let's compare that to our next clip. In this one, an entrepreneur is seeking an investment in a company that makes an app that would allow consumers to automatically invest in cryptocurrency.

[BEGIN CLIP]

**Matt Higgins:** One of the big frustrations I have with Bitcoin is that there still isn't any use for it from a consumer standpoint, right? Ever since that guy bought a pizza.

**Mark Cuban:** Dmitri, if you've seen Kevin walk away from deals before?

**Dmitri Love:** I have.

**Matt Higgins:** I think you should consider partnering up with different token economies because they're sprouting up all over the place. You can piggyback off their marketing machine to go ahead and push out.

**Kevin O'Leary:** After the regulators say yes.

**Matt Higgins:** After they say yes. But I like the idea of you partnering with all those different token exchanges.

**Mark Cuban:** That's a great way to kill your business while you're trying to get it started.

**Matt Higgins:** Well, I disagree. There are a few reasons why it's just not for me. I think it's too easy to create a competitor. There's too many similar products already out there and it's just too early. It's not investable in my opinion. And for that reason, I'm out.

**Kevin O'Leary:** Dmitri, just so you understand, I'm either 50/50 or I'm nothing. Your decision.

**Dmitri Love:** But 50% is quite a bit.

**Mark Cuban:** Well, Demetri, I wouldn't look a gift horse in the mouth. It's a great opportunity to take on all the hassles you're struggling with.

**Kevin O'Leary:** This is the moment. You have to decide if you want me as a partner or not. It's your decision.

[END CLIP]

**Tracey Diamond:** As these clips illustrate, the Sharks vary from being "eager to invest in something on the cutting edge" to being too nervous to jump in. And they go back and forth about the potential regulatory issues, among other things, inherent with something this new and the issues and possibilities that might arise. So, EWA products are similarly on the cutting edge, and in some ways the technology has developed faster than the law, which unfortunately we see all too frequently. Right? So, great marketing and being in an innovative space is half the story, but the other half is compliance. So, let's break down the legal risks. Carlin, what are the regulatory issues that you're seeing out there for companies offering these products?

**Carlin McCrory:** Sure. So, I want to start with a little bit of history on EWA. And as

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Emily said, employees having access to their wages is a great benefit and that should come with some regulatory consideration as well. And both the CFPB and the states have taken particular interest in this space. So, back in 2020, the CFPB issued an advisory opinion under the first Trump administration which stated that certain employer partnered EWA services didn't meet the definition of credit under TILA because they didn't involve the right to defer payment of a debt or to incur debt and defer its payment. And that advisory opinion applied to employer-based EWA services that met certain conditions but didn't address whether other forms of EWA like direct to consumer were credit. So, in 2024, the CFPB issued a proposed interpretive rule that would have treated all EWA services as credit under TILA and classified certain delivery fees and tips as finance charges. The CFPB didn't finalize that proposed interpretive rule and instead in January 2025 it rescinded the 2020 advisory opinion. And thereafter, in May of 2025, the CFPB wiped the slate clean by withdrawing both the 2020 advisory opinion and the 2025 rescission of that opinion.

**Emily Schifter:** Making things clear as mud, right?

**Tracey Diamond:** Right. What's the bottom line from that? So, where we are.

**Carlin McCrory:** So, where are we today? Good question, Tracey. So, in December of 2025, the CFPB recently published this advisory order focused on what it calls covered EWA. And it defines a specific EWA arrangement that meets all of the following criteria

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and it determines that this covered EWA is not credit. So, the factors that the product needs to have is that the amount a user can access can't be more than the wages they've already earned based on payroll data.

**Emily Schifter:** Which makes sense, right? It's not a loan if you've already earned it, right?

**Carlin McCrory:** Right. The provider must recoup the funds through a payroll deduction from the next payday, but not by debiting from the user's regular bank account after the wages are paid. Before the transaction, the EWA provider must disclose that it has no legal or contractual claim or remedy against the user if the payroll deduction is insufficient to cover the full amount, and it won't send any amounts to debt collection or report to a credit reporting agency, and then the provider cannot assess the credit risk of individual workers through either credit reports or credit scores.

**Emily Schifter:** Carlin, I was going to ask one question just for our listeners who aren't as familiar with the payments world. And maybe this is a basic one-on-one level question, but if the CFPB had determined that these services were credit under the Truth in Lending Act, what would the consequences of that have been for employers or companies who wanted to offer these products? Would it have made it prohibitively difficult to offer it or is it just sort of changing the regulatory framework?

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**Carlin McCrory:** It would change the regulatory framework. It would significantly impact products that meet these criteria today or prior to this advisory opinion, because they would need to comply with the Truth in Lending Act Reg. Z to provide these consumers with disclosures. It would affect tips and things that could be considered finance charges. So, it would have an impact on the market. And another thing I want to note from this advisory opinion is that it said while products that meet these criteria are not credit, we basically aren't opining on all other types of EWA so that you need to analyze yourself to determine whether it's credit or not. But they didn't make a statement one way or the other that other products are credit.

**Emily Schifter:** Okay.

**Tracey Diamond:** So, I'm just trying to sort of think this through. A provider wants to comply with all of these prongs. That means they give the money to the employee and the employee earns the money, but the payday hasn't happened yet. The provider gives the employee the money and then the employer via payroll deduction pays the provider. Is that the sequence?

**Carlin McCrory:** Yes, that's basically how it works. And this is generally typical of an employer-integrated product as well.

**Tracey Diamond:** Which makes sense. And so can you envision a situation where the

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payroll deduction, I guess, other than the employer running out of money, which I suppose is pretty infrequent, can you envision a situation where since the employee already earned the money, that the payroll deduction wouldn't be enough to satisfy the amount that the provider provided to the employee? I guess it's in advance, but after earning it, right?

**Carlin McCrory:** Suppose there could be situations where an employee has other garnishments or other deductions from wages that could be problematic.

**Tracey Diamond:** Understood. So, where does that leave us? So, the advisory opinion gave a pathway for EWA providers to provide this product. So, where are we now?

**Carlin McCrory:** Well, now we have to consider that there are state laws on this as well. So, about 13 states have EWA laws. And in 2025, roughly 25 states proposed EWA legislation. But obviously all states didn't pass that legislation. So, for 2026, I'm expecting another push from the states for more states to enact EWA legislation. When we look at those EWA laws across the board, most of them are relatively similar. There are a few outliers, but roughly similar. And then this has been an active space for litigation, particularly with the New York AG. She has initiated lawsuits against EWA providers stating that the company's practices constitute illegal and deceptive conduct and abusive lending practices that violate New York's long-standing usury prohibitions. One suit also alleges the company has violated New York's wage assignment laws. And

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these actions allege that EWA products are illegal payday lending schemes or that fees and tips constitute interest or finance charges in excess of state civil and criminal usury caps.

**Carlin McCrory:** So, when I think about the full market, Tracey, to better address your question, I think what will happen here is that EWA providers who are already in the market will stay with their current path. If they're employer-integrated, they'll likely stay the course and then direct to consumer will likely stay the course as well. I think for new entrants to the market, perhaps you look at an employer-integrated system, but that CFPB advisory opinion could go away in the next administration change as we've seen the turmoil there. So, it'll be interesting to see. It is going to be harder to enter the market as a small player because you have to consider all of the various state laws, licensing, registration requirements, et cetera.

**Tracey Diamond:** I think we've now sufficiently scared all of our listeners to not engage with an EWA provider. But for those that are still interested in doing so, I guess one question I had was on the New York AG's usury laws. It sounds to me like this is a benefit for employees. It's voluntary. They're doing this so that they can get to their own money faster. Where does the usury concept of that come in? Is it the charges to the employees for using that service?

**Carlin McCrory:** Yes, generally.

**Tracey Diamond:** It kind of reminded me when Emily and I first started talking about this topic for today's episode of litigation from the past about direct deposit pay cards and whether or not they could be involved fees and how there's rules against charging fees. But the point there, if I'm remembering correctly, was that there wasn't a choice. Like the employees were forced by the employer to accept the pay card and then had to pay a fee to get basically paid. Here the employees have a choice.

**Carlin McCrory:** Yes, generally the employees have a choice whether they want to pay a fee to get the funds instantly rather than waiting for a traditional ACH to roll through to their bank account.

**Emily Schifter:** Yeah. So, obviously it's up in the air how exactly the CFPB and some of the states are going to look at this from a payments perspective, but of course, I'm sure a lot of our listeners are listening in and thinking about some of the potential employment law implications of these products, obviously, most of which are in the wage hour space. For example, Carlin, you mentioned one of the issues in the New York AG suit was the wage assignment laws, something that I think employers don't see a whole lot of. But there's the question of if you're agreeing to give the access to your future pay in order to allow the early payment of your earned wages to be repaid. Is that an assignment? Certainly there's a question of whether it's a deduction from pay. And state laws and federal law on some occasions can put a lot of restrictions on what

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you're able to deduct from employees' pay, even if it's on their request. There's wage payment issues, whether it's the timing or requirements for how they're receiving wages. Like you mentioned, Tracey, on the debit card or a payroll card versus direct deposit, there's potential regular rate issues under the Fair Labor Standards Act.

**Emily Schifter:** If receiving pay at a different time, could that potentially affect the calculation of overtime or bonuses? If pay is advanced or deducted irregularly, maybe, we don't know. Minimum wage, potential issues or exemptions. If advance takes an employee below minimum wage by the time that's recouped in the next pay cycle. Garnishment and other laws, it's all kind of up in the air. And sometimes whether and to what extent any of these laws might apply to an EWA product can really depend on the structure of that product. In some cases, it's not the employer who is touching any of this at all. It's all happening. It's direct to consumer and the consumer has agreed to do this. And so there's no employer deducting pay or changing what's being paid. And a lot of the laws refer specifically to an employer. So, you have the argument that maybe none of these laws apply, but some of the laws don't clarify either way. And again, I think this is an area where the technology has outpaced the law. So, lots of questions, not a lot of answers.

**Tracey Diamond:** As you were saying all that, Emily, that is exactly what I was thinking in my head over and over again is this is a perfect example of the technology has outpaced the law. This whole body of law really doesn't apply. And I get the concerns

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and the fear of abuse, but the technology really has outpaced the law here and it'll be very interesting to see if the law will ever catch up. So, the Sharks famously love to ask, how do you make money? And that can be a hard question to answer sometimes, especially with regard to tech startups. So, we mentioned that in some cases the EWA providers might charge a fee to employees who use their services, and we talked about that a little bit, but let's probe that a little bit more. Carlin, what issues might arise with regard to how the providers are making their money?

**Carlin McCrory:** Right. So, as we discussed a little bit earlier, fees and tips could constitute interest or finance charges in excess of state civil and criminal usury caps. And in the labor and employment world, fees for use of a debit card to get wages can also be prohibited by state law. And then in that employer-integrated model, they may not have fees directed at the consumer, but rather they may charge the employer a fee, which is generally fine. It's an employment benefit that they would be providing to their employees such that the third-party provider is basically a middleman facilitating this type of program and taking on the burdens of compliance.

**Emily Schifter:** So, we've discussed that EWA products are meant to be different or are different in practice from a payday loan because they're giving employees early access to money they've already earned versus taking a loan against money they expect to earn in the future.

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**Tracey Diamond:** Hope to earn in the future.

**Emily Schifter:** Hope exactly. Assuming all goes according to plan. But we talked a little bit before about, is that true? Is that a difference without a distinction in practice, or does the concept of loan still come up in this context, Carlin?

**Carlin McCrory:** Oh, it definitely does. So, I'll talk about some of the various state models. And for example, Connecticut classifies EWA as a loan and establishes a tailored carve-out with specific fee caps and exemptions for employer-based models. So, in this Connecticut framework, which I won't go into all the nitty-gritty details, we could be here all day talking about all the states. But providers can't charge more than \$4 per advance or \$30 per month in total fees. Advances are capped at \$750 and limited to once per pay period unless the consumer can access at least 75% of earned wages. They require wage verification. It prohibits any sort of default tipping practice where a default tip amount must be set to \$0. And then class action litigation waivers are prohibited and traditional collection practices are prohibited. So, that's just one model in Connecticut. In contrast, Arizona issued an Attorney General opinion concluding EWA products that are full non-recourse and no interest are not consumer lender loans under Arizona law.

**Carlin McCrory:** And then throwing in another state to the mix, we'll use Arkansas as an example. And they govern consumer direct Earned Wage Access services and

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employer-integrated Earned Wage Access services. And notably, the Arkansas Act explicitly excludes from the definition of a provider employers that offer a portion of salary, wages, or compensation before the normally scheduled date. So, there are a host of requirements in the Arkansas law, which we do see with some of these other states who have enacted EWA laws. It's transparency in fees, consumer rights, prohibitions against certain practices such as sharing fees with the employers or using credit scores to determine eligibility.

**Tracey Diamond:** Carlin, if an employer on a one-off basis decides informally with an employee who just like for whatever unusual circumstance really needs access to their money, they've earned the money but they just haven't gotten to payday yet, and the employer decides to just pay the employee early off the normal payroll period, do they have to worry about all these laws for a situation like that?

**Carlin McCrory:** Technically, yes. They should look in to see whether this is permissible. However, I think many of the laws exempt employers, but it's something you should double-check.

**Tracey Diamond:** Okay. So, that brings us to our next clip. And this one involves a much less successful pitch by some entrepreneurs who are trying to sell a pill that they claim will block your body from absorbing calories. I'll buy that. Let's listen in.

[BEGIN CLIP]

**Mark Cuban:** You can't claim that it's going to reduce 100 calories out of what you eat by taking two pills.

**Contestant 1:** We don't make that claim.

**Mark Cuban:** That's what he said.

**Contestant 1:** We are going to make the claim that it is going to block fat at a percentage dependent on the individual.

**Mark Cuban:** Your T-shirts say minus cal.

**Contestant 2:** That's the brand name of the company.

**Mark Cuban:** When a consumer looks at it, what do you think he's going to think?

**Contestant 2:** Minus cal. Minus calories.

**Mark Cuban:** Right.

**Rohan Oza:** What is your strategy?

**Mark Cuban:** Minus cal. The strategy is to make you think that this is going to reduce your calories.

**Rohan Oza:** Mark, let me ask my question.

[END CLIP]

**Emily Schifter:** I think this was probably before GLP1s, but as these entrepreneurs learned, at least in Mark Cuban's eyes, there was some seriously problematic truth in advertising issues with this product. It was called Minus Cal because it didn't actually minus out calories consumed. So, speaking of truth in advertising, when an EWA vendor says they're not offering credit, what should HR do to verify this in practice?

**Carlin McCrory:** I'm going to give you a cheeky response, which is get counsel involved.

**Tracey Diamond:** Well, you're a lawyer.

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**Carlin McCrory:** Because there are so many different variations of EWA products and how products can be offered and what the specific product offering looks like. This requires a more in-depth analysis. And so we just need to be clear on the model, how it's being utilized, and really we need to know the details of what's going on to make sure it is being advertised properly.

**Emily Schifter:** And it sounds like confirming what state you're in.

**Carlin McCrory:** Right.

**Emily Schifter:** Definitely adding some complexity. So, if you're explaining this to employees as, hey, we're going to offer this new benefit, what are sort of best practices for how an employer should let employees know about this?

**Carlin McCrory:** Yeah. So, we don't want to offer what I'll call a loan in sheep's clothing. The terms need to be clear up front. So, there may be state law disclosure requirements that the provider may be giving, such as disclosing all fees associated with the EWA services and informing consumers of their rights under the agreement before entering into a contract, cancellation rights. And then if you are charging or receiving a tip, gratuity, or other sort of donation from the customer, that needs to be clear. And it also needs to be clear that those tips are voluntary and not contingent on the provision of the services.

**Tracey Diamond:** So are there any other red flags for an HR department to look out for in vetting a product like this? And are there benefits to offering it in-house as an employer-integrated model versus using a third party?

**Carlin McCrory:** So, obviously, with the CFPB's recent opinion, perhaps it's less risky for it to be employer-integrated. If you're in-house, you can certainly control the program more, but then you're also going to take on the liability if anything goes awry with the program rather than the provider. You're also going to be responsible for all of the compliance of the program if you're taking on the burden in-house rather than partnering with a provider. As it relates to direct-to-consumer, the employer may never know that the employee has chosen to do this. So, that's a different risk analysis that you wouldn't necessarily know about. Employers should also be cautious, like we've discussed, of state laws that can vary and making sure they're compliant with those. And that's whether you're doing this in-house or whether you're partnering with a third-party provider. And then for contractual protections, it needs to be clear in the contract who's going to be responsible for that wage and hour compliance or chasing down repayments from employees who have left the company, if you're even allowed to do that. It just needs to be clear in those agreements who's taking on the compliance burden for what specifically within the program.

**Emily Schifter:** So, from an employee relations perspective, I mean, certainly beyond

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the law, Tracey, I'm curious for your thoughts. I mean, it seems like we've talked about all the risks and why this might be something employers might want to be cautious about on the one hand. On the other hand, I think it is a benefit to employees. We're obviously seeing more and more of it. We wouldn't see all this regulation if it wasn't out there happening in the market. And I feel like these days people expect everything on demand and you can go to any website and finance something immediately. So, it seems like this isn't something that's going away, and I can definitely see a benefit to allowing people to access their pay earlier than they would otherwise, just to help them live their lives better. But I can see some potential red flags or issues with it too. I mean, if people get behind or you get sort of stuck in a cycle of needing an advance, you know, if you get underwater and can always need to advance your pay, I mean, is that really helping or hurting your situation? And maybe that's not HR's business, but from a practical perspective, could certainly be disruptive to the workplace.

**Tracey Diamond:** I think that that part, Emily, like maybe the issue is combining an employee advance with access to their wages early. So, I could see, let's say an employer pays once a month, and at week two, the employee asks for their earned wages for those first two weeks, but then that's not enough. And now week three, they've now asked for an advance. What a headache for HR to keep track of it all, first of all. But then I could really see that cycling down the way you just described, where the employee is going to now be in a hole because they're just never catching up. That's a scary place to be.

**Emily Schifter:** Oh, exactly. And then what if you have disputes about that or somebody then leaves employment and they were in the hole and you can't always recoup that depending on state law and you can definitely see where that could create some questions. And certainly with respect to treating employees differently, all these different state laws, it sounds like what you might be able to do in one state, you might not be able to do somewhere else. And our employees going to say, well, hey, wait a second, my coworker got to do this and I didn't get to. And how does HR keep track of all of that?

**Carlin McCrory:** On top of garnishments, on top of benefits deductions. Let's say you pay once a month, and week two, they're now paying out the earned wages for those two weeks, but the benefits usually comes out on the end of the month. Does that create a minimum wage issue? Because now you're pulling so much money out as a benefits deduction that the person goes below minimum wage, or you're going to pull half of the benefits deduction with the first pay. And who's keeping track of all that?

**Tracey Diamond:** Right, exactly. I hate to be so negative here, but I do see a lot of concerns, but I also understand why this is sort of an enticing product. And to your point, it's out there because otherwise there wouldn't be all this regulation around it. So, employers may want to consider it or at least learn more about it because it could be a very effective retention tool.

**Carlin McCrory:** Yeah, for sure.

**Tracey Diamond:** Emily, do you see any other sort of benefits that an employer could be thinking about offering for employees that are having issues making it paycheck to paycheck?

**Emily Schifter:** Yeah. I think there are definitely financial counseling type of benefits. I know EAP providers that employers use sometimes will offer that as a benefit. I have seen some employers in certain industries offer housing assistance or assistance looking for affordable housing or loan refinancing assistance, different financial counseling options. And I could definitely see those being beneficial regardless. But certainly if there is an EWA product either that you know your employees are using out in the market, or that you're choosing to offer to them to kind of pairing it with something like that to help avoid getting into that hole that we discussed.

**Tracey Diamond:** Now, this has been a very interesting conversation about a new product for the HR world. This is really a very exciting topic and a very exciting product. So, I guess stay tuned as the regulations and the law seeks to catch up to the technology. Thanks so much, Carlin, for joining us today, and thank you to our listeners for listening in. Please shoot us an email, tell us what you think, and we look forward to having you listening in again soon. Thanks so much.

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