



Congress of the United States
House of Representatives
Washington, DC 20515

October 29, 2020

The Honorable Andrew M. Cuomo
Governor of New York State
New York State Capitol Building
Albany, New York 12224

Dear Governor Cuomo,

Thank you for your attention and investigation into the payroll industry following the MyPayrollHR fraud and resulting fallout. As Members of the New York Delegation, we are deeply troubled that thousands of employees and small businesses across the state and nation have been negatively impacted by this fraud. We are especially troubled by the lack of protections for employees and worry that this could be a larger issue in the future.

As you are aware, it has been widely reported that the President of MyPayrollHR illegally moved \$26 million dollars of payroll funds into his own bank account. The banks found this suspicious and froze his accounts, but Cachet Financial Services, the company who is contracted to transfer money to the employees' accounts via direct deposit payments, failed to notice the money was not there and paid employees. When Cachet realized the funds were not there, they reversed the payments. This caused overdraft fees, missed rent payments and related hardships for employees.

As you know, the National Automated Clearing House Association (NACHA) is the steward of the Automated Clearing House (ACH) Network, a payment system that universally connects all U.S. bank accounts and facilitates the movement of money and information considered the electronic payments system in the United States. The Operating Rules apply to all payments sent and received through the ACH Network. This system allows for payment reversals within the ACH network under very limited circumstances for legitimate errors. NACHA has confirmed to us that withdrawing rightfully owed funds because of a processor's own mistake or lack of oversight, as Cachet did, is prohibited by NACHA rules.

According to NACHA, "Cachet violated the rules by impermissibly reversing payroll Direct Deposits without a valid reason. Valid reasons are limited to legitimate errors such as wrong amount, wrong account, or a duplicate payment."

In this case, approximately 8,000 employees had payroll Direct Deposits improperly reversed. While we are under the impression that most employees have been paid now, we are aware that that they have not been made whole in terms of costs incurred as a result of these improper reversals. Since the employees did not directly contract with MyPayrollHR or Cachet, they have no recourse to recover incurred costs.

One Capital Region resident shared that, “most of the businesses affected are small business, many owned by women, that may never see their funds and missing tax monies fully returned. A significant portion of employees whose money was taken by Cachet are home health aides, a predominantly female worker base, who live paycheck to paycheck caring for our elderly and sick while supporting their families. While Cachet has worked to rectify their erroneous retractions of money from these workers, the damage they caused is larger than the sums they took. Overdraft fees, bounced bills, and snowballing negative balances are still affecting victims across the country...”

In addition to employees, small businesses are also still struggling as a result of the fraud and improper actions. Unfortunately, this hardship has been further exacerbated by the current COVID-19 crisis and economic turmoil. For instance, there are still many small businesses in New York State whose tax funds are being held up right now. In a recent update from Melanie O'Malley, the owner of a small bakery in the Capital Region she shared, “Pretty much all the small businesses affected by the MyPayroll scam and total lack of payroll oversight/protection has left us on our own to try and pursue banks holding our tax money and not releasing it back to us. Now with the fall out from Covid, and already having a huge amount of money stolen, or held hostage as it were, AND the IRS still wanting back due (that are sitting in Pioneer Bank and Bankcorps) people are losing hope and livelihood.” Another Capital Region constituent, Catherine Halayko, the co-director of a pre-school in Bethlehem, shared with Congressman Tonko that \$10,000 in state and federal taxes submitted to MyPayrollHR still have not been repaid.

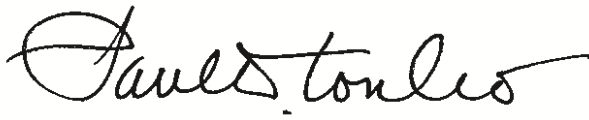
While we are extremely concerned for those who have incurred losses and for small business owners who continue to suffer, this instance reveals a troubling lack of oversight of the payroll industry. Around 250,000 employees nationwide worked for the businesses that used MyPayrollHR as a payroll processor, and MyPayrollHR is just one of the more than 30,000 payroll processing companies in this space. We are interested in learning more about your current investigation and what further oversight may be necessary to ensure this does not happen again. Below are several questions to that end.

1. What is New York State doing in the payroll space to address those harmed by the MyPayrollHR fraud and resulting harms? Have all small businesses and employees been made whole? If not, what damages or ongoing issues remain?
2. Is there any recourse for employees who suffered losses from overdraft fees, missed payments and other related costs of delayed payments? What about for the small businesses dealing with the frozen tax funds?
3. What is New York State doing to stop something like this from happening again in the future? Are there lessons learned for other states or for the federal government to ensure accountability nationwide?
4. What are your current protocols and guidelines that protect small businesses in the payroll processing space? What are your current protocols and guidelines that protect employees in the payroll processing space?
5. Are there practices you are updating or considering updating to protect employees and small businesses in the future?

6. Are there federal resources or federal guidelines that would better assist you with oversight and accountability in the payroll space? Is there anything else that you suggest Congress consider in terms of federal oversight?

Thank you for your attention to this matter. We commend New York State for looking into this matter and for your work on behalf of all New Yorkers.

Sincerely,



Paul D. Tonko
Member of Congress



Gregory W. Meeks
Member of Congress