

# FlexWage Warns State EWA Legislation Does Not Align With Federal Guidance And Facts

*Nevada and Missouri legislation disregard CFPB advisory opinion on EWA and regulation under TILA.*



FlexWage Solutions Logo

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EINPresswire.com/ -- SCOTTSDALE, ARIZONA (September 28, 2023) - FlexWage warns that new state regulation of Earned Wage Access (EWA) disregards guidance provided by the Consumer Financial Protection Bureau (CFPB). "We are concerned that some state legislators are implementing regulations that disregard the mission of EWA and increase consumer risks.

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*Frank Dombroski, founding  
CEO of FlexWage Solutions*

FlexWage is dedicated to safe, responsible, and scalable EWA solutions, and our objective is to help legislators protect the citizens of their state while offering much needed EWA benefits. We do not believe EWA should be reduced to online payday lending standards,” said Frank Dombroski, founding CEO of FlexWage Solutions. “Several states (California, Maryland, and Kansas) have published strong guidance on the criteria that distinguish EWA from consumer lending. We strongly support this thoughtful approach to EWA regulation.”

“The recent EWA legislation passed by Missouri and Nevada contradicts the 2020 Advisory Opinion from the CFPB,” said Carl Morris, Vice President of Compliance at FlexWage Solutions. “The CFPB outlined seven criteria that must be met to be considered a legitimate EWA program, and therefore not subject to regulation under the Truth In Lending Act (TILA). These states turned a blind eye to the CFPB research and conclusions, and put their new legislation at odds with established federal guidance.”

By reducing the criteria for classification as EWA, these states have opened consumers up to significant risks, including:

- Taking loans from multiple providers
- Earned wage estimation/calculation errors
- Overdraft charges while trying to recover funding from consumer accounts
- Lack of fully transparent and easily understandable fees, secondary transfer fees and overall

predatory payday-loan-like fees

- Use of an employee's personal credit information

Below are listed the seven criteria provided by the CFPB and the issues the Missouri and Nevada state legislation creates.

(1) Employer-based. The contract for EWA services is with the employer, not the employee.

Issue: The CFPB has committed to providing additional clarity on their EWA opinion. It is reasonable to conclude that direct-to-consumer models will not be included in the CFPB clarity, putting EWA State Legislation at odds with federal law.

(2) Accrued wages based on actual data. The EWA transfer amount does not exceed the accrued value of earned wages based on data provided by the employer.

Issue: EWA state legislation does not clearly define the kind (or accuracy) of data that must be used to calculate earned wages. Instead, vague language such as "income that a consumer has represented, and that a provider has reasonably determined has been earned" is used. This lack of clarity leaves significant room for error in calculating available earned wages.

(3) No fee or nominal processing fees. The employee does not have to pay to use the EWA benefit or access funds, and the funds are delivered to an account of the employee's choosing.

Issue: Transparency in fees and tips is not the same as capped/nominal fees and no tips. A recent industry study using public data of direct-to-consumer EWA providers shows that a \$100 transfer to an employee's bank account could cost the consumer more than a payday lender in those states when you include subscription fees, express delivery fees, and optional tips.

(4) Payroll deduction. EWA funds recovery is only via a payroll deduction.

Issue: EWA state legislation does not designate any specific process for recoupment of funds. When there is no designation of how the funds are recouped nor limit to the number of times an EWA Provider can attempt a recoupment, the consumer/employee is at a greater risk of overcharges and overdraft fees.

(5) No remedy. The EWA vendor does not claim a remedy for the non-recovery of funds.

Issue: If an EWA Provider has no legal or contractual claim, why do some providers find it necessary to require employees to assign their wages to the Provider in their Terms and Conditions? (Payday lenders, who have been regulated to protect consumers, use wage assignment. Yet, state legislation makes wage assignment perfectly legal for EWA Providers.)

(6) Transparency and confirmation. The employee is notified of the terms and conditions before

access to the EWA program and funds.

Issue: EWA state legislation prescribes that EWA Providers must provide clear and transparent terms and conditions, including one free option to receive the EWA funds. However, there is no limit to the total cost incurred by the employee/consumer. The EWA Providers can directly debit an employee's bank account to recoup funds without limitations. State legislation says the EWA Provider must repay any overdraft caused by attempting to collect an incorrect amount or time. Yet if the EWA Provider is confirming the transfer amount, any fees, and when the funds will be recouped, no overdraft should ever occur.

(7) No credit checks. The EWA vendor does not do a credit check on the employee.

Issue: When providers have access to a large amount of personal employee information and decide the percentage of the earned wages an employee can access, they can assess creditworthiness by reviewing job tenure, demographics, or bank account information. Earned wages are wages an employee has already earned. EWA Providers have no reason to access personal employee information and determine the percentage of net earned wages each employee should have access to unless the EWA Provider is making a risk assessment.

Please see the article "[The Great Divide of EWA State Legislation.](#)"

#### About FlexWage Solutions

FlexWage helps employers attract, engage, and retain employees with financial wellness benefit solutions. FlexWage's OnDemand Pay solution is an employer-funded, regulatory-compliant Earned Wage Access (EWA) solution. It helps employees manage cash flow volatility by accessing their earned wages between pay cycles. FlexWage prevents the high cost and stress of bank overdraft fees, late fees, and short-term loans by providing employees access to their money when they need it. Once established on a more solid footing, employees can focus on financial education, budgeting, and planning solutions with FlexWage's Sum180 solutions. FlexWage provides financial wellness services to partner institutions and directly through employers. Founded in 2009, FlexWage invented and patented Earned Wage Access. Learn more at [flexwage.com](http://flexwage.com).

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