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Debit Versus Credit Cards

When you are pulling out the plastic to make a purchase, will it be debit or credit? It makes sense to know how each works, and their respective advantages and disadvantages. The bottom line is that debit cards are fine for small and/or routine purchases, but credit cards, as a rule, are better for major purchases and online transactions because they offer more protections if something goes awry.

Debit Cards

A debit card is like an electronic check—the consumer is spending money that he or she already has. As compared with credit cards, debit cards carry the potential for greater liability if the card is lost or stolen. Under federal law, liability is limited to \$50 for the fast acting consumer who notifies the bank within two days after discovering an unauthorized transaction. After that, the cardholder could lose up to \$500, or even more in some cases. On its own, a bank may choose to waive liability for unauthorized transactions if the consumer has taken reasonable precautions, but, of course, this varies depending on bank policies.

For transaction errors, banks, as a general rule, have up to 10 days to investigate after receiving notice from the cardholder, or up to 45 days in special circumstances. Pending the outcome of the review, banks generally must credit the account for the amount of the alleged error.

As with credit cards, debit cards offer convenience and an alternative to carrying cash. But, unlike credit cards, the consumer is not taking on debt when using a debit card. Nor is the consumer paying interest or an assortment of fees, assuming that the account is not overdrawn. It may be possible to avoid even the overdraft fees by linking a checking account to a savings account or a line of credit. A debit card can also be used to obtain cash without incurring charges that usually come with cash advances by means of a credit card.

When there is a problem with purchased merchandise, there is no right to withhold payment

if the consumer has used a debit card, as might be an option with a credit card transaction. Another drawback for debit cards is the practice of putting “holds” on funds. If the final amount is not yet known, a merchant may place a temporary hold on funds for more than is actually spent, which denies the consumer access to that amount until the hold is lifted later.

Credit Cards

Federal law limits a consumer’s losses to a maximum of \$50 if a credit card is lost or stolen, and also provides protection against credit card billing errors. Unlike with debit cards, federal law also may allow the user of a credit card to withhold payment under certain circumstances until a problem with purchased merchandise is rectified.

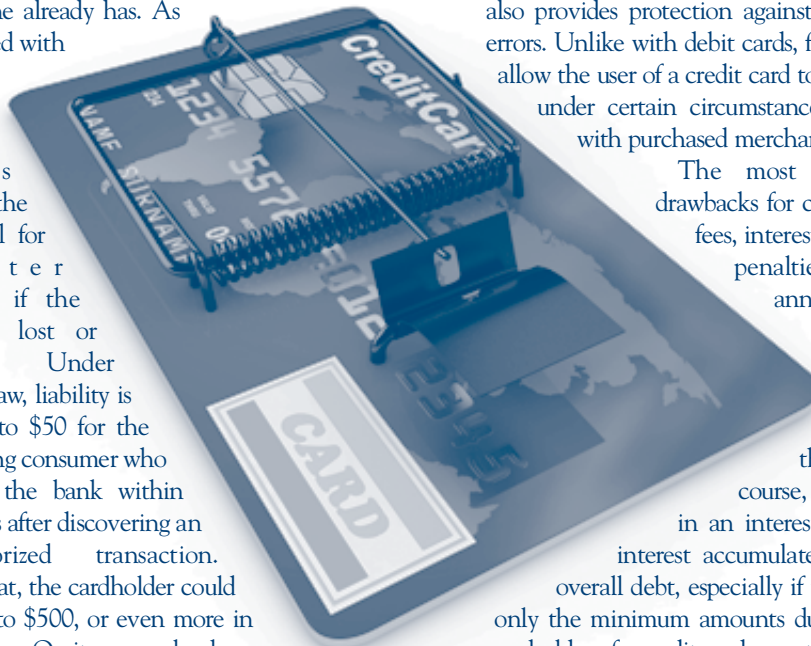
The most commonly cited drawbacks for credit cards concern fees, interest rate increases, and penalties. In addition to annual fees for some cards, there are usually fees for paying late and for exceeding the credit limit. Of course, unless a consumer is in an interest free grace period, interest accumulates and adds to the overall debt, especially if the cardholder pays only the minimum amounts due each month. As any holder of a credit card can attest, having a credit card also makes overspending very easy, especially with high credit limits and enticements such as rewards programs.

Sidewalk Liability

Pennsylvania law provides that property owners must keep their sidewalks in “a reasonably safe condition for travel by the public.” Whether a sidewalk is properly maintained and is safe is determined on a case-by-case basis, with an examination of the surrounding circumstances of each case.

In a recent case, a woman won damages against a small insurance agency after she fell, spraining her ankle, tearing her meniscus, and suffering bruises. Following a light snow, the woman had been on her way into the building to speak to one of the agency’s employees about a personal matter when she fell on an uneven portion of the sidewalk.

Continued on page 3



Temporary Workers Have Broad Rights

In a recent case involving a serious injury sustained by a “temp” worker, the Pennsylvania Superior Court reaffirmed the principle that only the actual employer of an injured worker bears the benefits and the burdens of the Workers’ Compensation Act. But, in doing so, the court recognized a temporary worker’s right to raise claims against both the temporary services agency that hired her and the workplace where she actually worked.

The injured woman was hired by an agency that supplies temporary employees to businesses. On her second day of employment, she was assigned by the agency to report to work at a factory to operate a punch press. The employee’s right hand was amputated by the punch press while she was working. The agency promptly notified the injured woman that she was entitled to wage and medical benefits. Not satisfied with the weekly amount of wage benefits offered by the agency, the injured woman filed a workers’ compensation claim, naming the factory as her employer.

The factory denied responsibility, claiming that the injured woman was not its employee but was employed only by the agency. At a hearing, the injured woman, the factory, and the agency came to a workers’ compensation benefits settlement in which they agreed that the agency was the employer. As part of the settlement, the parties also agreed to raise the woman’s wage benefit to an amount higher than was originally offered by the agency.

The injured woman then sued the factory for negligence and strict products liability on the ground that the punch press was dangerously defective. In response, the factory claimed that the woman was its employee and was barred by the Workers’ Compensation Act from suing.

The Superior Court noted that employees are permitted to sue third parties for their work related injuries. An employee injured by a dangerous machine can sue the manufacturer if the employer is not the manufacturer. An employee injured on a third party’s property while working for a separate employer can sue the property owner for negligent maintenance of the property. Temporary employees can sue the businesses where they are placed, because they are not employees of those businesses. The court held that the factory could not deny its status as the employer in the workers’ compensation claim and then later raise the defense of employer status in the injured woman’s suit regarding the punch press machine.

Businesses sometimes hire temporary workers in order to avoid the many liabilities associated with employment. Properly structured, the use of temporary employees relieves an employer of liability for workers’ compensation benefits, unemployment compensation, and all health insurance and retirement benefits. However, particularly when employers maintain dangerous equipment or have other workplace safety concerns, their use of temporary employees may result in broader liability exposure.

If you are considering hiring temporary employees, you should thoroughly assess your liability as a third party before taking temporary employees into your workplace. If you work as a temporary employee, you have workers’ compensation benefits rights with the agency that pays and places you, and you have separate rights against any third parties whose negligence causes you injury.

Sales Tax Exemption for Construction Items

A Pennsylvania medical center recently sued the state to recover sales taxes and won. The medical center purchased and installed MRI and PET/CT scan equipment in connection with the reconstruction of a building. An MRI device is imaging equipment used to identify disease and damage to soft tissue; a PET/CT scan device is equipment that uses radioactive substances to make images of cross sections of the human body. Both systems are large and expensive, and the construction contractor added over \$362,000 in sales tax to the invoice for the equipment. The medical center paid the invoice, including the sales tax, and then challenged the sales tax.

Personal Property or Fixture?

The medical center argued that the two devices were not personal property or merchandise but were fixtures in the building and should be exempt from sales tax. The structural changes needed to accommodate the equipment included specialized flooring, heating, plumbing, and ventilation. The medical center had to strengthen its floors and ceilings to support the equipment. The installation took more than three weeks, and the devices were connected to various cooling, electrical, heating, and plumbing systems and were bolted to the floors.

The Pennsylvania Commonwealth Court agreed with the medical center, finding that the Pennsylvania Department of Revenue should have excused the sales tax. The court noted that construction contracts are specifically exempted from sales tax. The court also observed that whether an item is part of the construction contract is not always clear:

- Furniture is never part of the construction;
- Permanently affixed items, such as roof shingles and skylights, are always part of the construction; and
- Other, removable fixed features may or may not be part of the construction.

The court found that the two pieces of imaging equipment were removable equipment that had become part of the construction because they were thoroughly physically attached to the building, they were essential to the use of the building, and they were intended to be permanent. According to the court, the size and weight of the items do not define whether they are part of the construction; instead, the focus must be on the function and use of the items.

Pennsylvania residents and businesses are not obliged to pay sales tax on items that are part of a construction contract if those items qualify as permanent fixtures essential to the real estate.

Surveillance of Injured Workers

A Pennsylvania man who suffered a broken arm when he fell at work later sued a private detective agency for invasion of his privacy and lost. The injured man claimed that the agency had violated his privacy when it videotaped him praying inside a mosque.



The detective agency had been hired by the injured man's employer's insurance company. Insurance companies that handle work injury claims frequently put injured

claimants under surveillance. Surveillance using videos or photographs can be a successful tool to document occasions when injured claimants engage in physical activities that are inconsistent with their claimed injuries. In the case of the injured worker who sued the detective agency, the detective used a zoom lens from across a highway, standing 80 yards from the mosque. He filmed the injured worker through a window while the worker stood and knelt for 45 minutes.

The injured man argued that he had an expectation of privacy even while praying in public. He claimed that constitutional freedom affords everyone complete privacy when engaged in prayer and worship, even in visible locations. Contending that acts of worship are always private, the injured worker argued that even though he participated in the worship service with others, he sought to keep the service "free from interference of the world," and, in particular, he sought to "keep his prayers to his god private to himself."

The court rejected his claims, noting first that established law acknowledges that all injured workers who raise compensation claims have a diminished expectation of privacy. Simply by raising compensation claims, injured workers give up privacy in their medical records and even in their physical presence in public places. The court observed that the mosque was open to the public, and that the injured man was praying directly in front of a plate glass window. The court refused "to create a privacy expectation based on religion," and focused on the fact that the injured worker was in public at the time of the surveillance. The court noted that the worker's physical activities, and not his thoughts, prayers, or even expressions of prayer, were viewed and videotaped.

A critical fact in the court's decision was that the detective was standing at a lawful vantage point in a parking lot across the highway from the mosque. His use of a zoom lens, similar to using

binoculars, was deemed reasonable. Also important was the fact that the injured worker could have been seen and watched by any member of the non-trespassing public standing outside the mosque. The court found that the worker could not have reasonably expected that he was unseen while praying.

While surveillance at times of prayer or worship may offend some people, the law links privacy rights to reasonable expectations of privacy. When people pray in public, they have no right to assume that they are free from observation and video recording. All injured workers should expect surveillance. Any physical activity that is strenuous, against medical advice, or beyond the injured person's physical capacity should be avoided because surveillance can create the impression that the claimant is not injured. As to claimants who are in fact feigning or overstating their injuries, surveillance can produce evidence that leads to insurance fraud prosecution.

Sidewalk Liability

Continued from page 1

On appeal from a jury's award of damages to the injured woman, the agency claimed that the defect in the sidewalk was "trivial" and that the injured woman was thoroughly familiar with the condition of the sidewalk because she lived in the neighborhood and regularly walked past the agency.

The appeals court recognized that the law imposes liability on property owners to maintain their sidewalks but does not create liability for the "elevations, depressions or irregularities" that are trivial. No "definite or mathematical rules" define what is trivial; it is decided on the facts of each case. Finding that a defect of only two inches can be unreasonably dangerous, the appeals court upheld the jury's verdict. The court also noted that a pedestrian's knowledge of an area of a sidewalk does not excuse an owner's failure to maintain it. Pedestrians are not responsible for "keeping their vision continually fixed on the ground" in front of them, although they are responsible for using reasonable care. A pedestrian who is familiar with a bad stretch of sidewalk can be found contributorily negligent by a jury, barring some or all of the pedestrian's entitlement to damages.

If you own a sidewalk, Pennsylvania law requires that you keep it safe for pedestrian traffic. Repair defects promptly, and post clear warning signs of dangerous conditions pending the completion of repairs. When walking on a sidewalk, assume that you have a reasonable obligation to look out for your own safety. Property owners are not strictly liable to pedestrians; instead, they are responsible only for conditions that are carelessly dangerous.

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