

ORDER NO. 2018-030

IN THE MATTER OF:	§	BEFORE:
	§	
PAYCOM SOFTWARE, INC.	§	THE BANKING
OKLAHOMA CITY, OKLAHOMA	§	
	§	
AND	§	COMMISSIONER OF TEXAS
	§	
PAYCOM PAYROLL, LLC	§	
OKLAHOMA CITY, OKLAHOMA	§	AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, in the matter of Paycom Software, Inc. & Paycom Payroll, LLC (Paycom or Respondent) was submitted to me, Charles G. Cooper, Banking Commissioner (Commissioner) of the State of Texas, for consideration and action.

1. Paycom Software, Inc. is a Delaware corporation with its primary place of business in Oklahoma City, Oklahoma.
2. Paycom Payroll, LLC is a wholly owned subsidiary of Paycom Software, Inc. located in Oklahoma City, Oklahoma.
3. Paycom offers payroll and human capital management services to employers in all 50 states and the District of Columbia through its software-as-a-service application. Paycom does not place funds on or issue prepaid cards.
4. The Texas Department of Banking (Department) has jurisdiction over Paycom and the subject matter of this proceeding pursuant to *Texas Finance Code* (Finance Code) Chapter 151 (Chapter 151). The Commissioner has the authority to issue this Consent Order (Order) and to assess administrative penalties pursuant to Finance Code §§151.706 and 151.707.
5. Paycom has been properly notified of its right to an administrative hearing under Chapter 151.

6. The undersigned representative of Paycom has full authority to enter into and bind Paycom to the terms and conditions of this Consent Order.
7. The statutory provisions at issue in this matter include, but are not limited to, Finance Code §§151.301, 151.302, 151.702, 151.706, and 151.707.
8. Any violation of this Order could subject Paycom to additional regulatory or enforcement actions authorized by Chapter 151 and other provisions of Texas law. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Chapter 151 or other applicable law.
9. For purposes of this proceeding, Paycom knowingly and voluntarily waives:
 - a. Service upon Paycom of this Order;
 - b. The right to present defenses to the allegations in this proceeding;
 - c. Notice and hearing prior to imposition of this Order;
 - d. The filing of proposed findings of fact and conclusions of law;
 - e. The issuance of a proposal for decision by an administrative law judge;
 - f. The filing of exceptions and briefs with respect to such proposal for decision;
 - g. Any review of this Order by the Texas Finance Commission; and
 - h. Judicial review of this Order as provided by *Texas Government Code* §2001.171 et seq., and any other challenge to the validity of this Order.
10. Paycom and the Commissioner agree to this Order solely for the purpose of this proceeding, and without Paycom admitting or denying any violations of law or regulations. This Order does not constitute an admission by Paycom that Chapter 151 or a rule adopted or order issued under Chapter 151 has been violated.
11. The Commissioner has considered this matter and finds as follows:

- a. Paycom offers a software-as-a-service solution which includes tools to perform an assortment of functions including: payroll, talent acquisition, time and labor management, talent management, and human resources management. The core of the Paycom business centers on the payroll service application. In a typical arrangement, the employer-client transfers funds from the client's bank account to an account held by Paycom to cover its payroll, tax withholdings, and Paycom fees one to three business days prior to the client's payroll date. Depending on the client, this transfer of funds is either done by ACH or a wire transaction. In either case, most if not all clients are required to pre-fund transactions. When the payroll and tax payments are due, Paycom distributes those funds to the employees and taxing entities accordingly. Paycom does not place funds on or issue prepaid cards.
- b. In February 2018, the Department wrote to Paycom, inquiring about their possible money transmission services. Paycom responded to that letter, detailing the products and services they offer and requested a meeting in person with the Department. Representatives from Paycom met with the Department on April 2, 2018 in Austin, Texas, to further discuss the services offered by Paycom. Based on the discussion of the April 2 meeting, the Department requested additional information from Paycom which Paycom provided. On May 24, 2018, the Department issued Paycom a determination letter stating that Paycom needed to obtain a money transmission license to continue offering its payroll service described in Items 10(a) above for employer-clients whose headquarters is in the State of Texas.
- c. On June 21, 2018, Paycom filed a temporary license application with the Department. The application was approved, and a temporary license was issued, on August 22, 2018.

- d. Under Finance Code §151.301(b)(4), money transmission means “the receipt of money or monetary value by any means in exchange for a promise to make the money or monetary value available at a later time or different location.” The Finance Code defines engaging in the business of money transmission as receiving compensation or expecting to receive compensation, directly or indirectly, for conducting money transmission. Finance Code §151.302(b). The Department has concluded that by receiving its Texas headquartered employer-clients’ funds in exchange for a promise to distribute those funds at a later time or different location to the Texas headquartered employer-clients’ employees and to taxing authorities, Paycom is conducting money transmission.
- e. Finance Code §151.302(a) provides that “a person may not engage in the business of money transmission or advertise, solicit, or hold itself out as a person that engages in the business of money transmission” without a license unless it is an authorized delegate of a license holder, is excluded from licensure under Chapter 151, or has been granted an exemption under Chapter 151.
- f. As described above, the Department has concluded that: (i) Paycom is conducting money transmission in Texas; (ii) prior to June 21, 2018, the Department had not licensed Paycom; (iii) Paycom is not an authorized delegate of a license holder; (iv) Paycom is not excluded from licensure under Chapter 151; and (v) Paycom has not been granted an exemption under Chapter 151. Consequently, the Commissioner finds that Paycom is in violation of Finance Code §151.302.
- g. As required by Finance Code §151.707(d), the Commissioner has considered the seriousness of the violations, Paycom’s compliance history, and Paycom’s good faith in attempting to comply with Chapter 151.

- h. Based on these findings and based on the representations made by Paycom as to the volume of transactions and length of time it has been conducting an unlicensed money transmission business in Texas, the Commissioner finds that a penalty of \$212,500.00 is appropriate.
12. Paycom has agreed to comply with the terms that are set out in the Order below.
13. Nothing in this Order shall prohibit Paycom from obtaining a money transmission license from the Department in the future.
14. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any other violations by Respondent not now known to the Department that come to the attention of the Department. Nothing herein shall be construed to limit Paycom's right to contest any future finding or determination of non-compliance.

Order

It is hereby ORDERED, ADJUDGED and DECREED that:

1. Within 10 days of the effective date of this Order, Respondent will pay \$212,500.00 to the Department as an administrative penalty under *Texas Finance Code* §151.707.
2. Respondent will fulfill all of the requirements to obtain a license to conduct money transmission in Texas as detailed in Chapter 151 of the *Texas Finance Code*. In the event that Respondent elects to withdraw its license application or Respondent's license application is suspended pursuant to *Texas Finance Code* §151.204, determined abandoned pursuant to 7 Texas Administrative Code §33.13(g)(1), or denied pursuant to *Texas Finance Code* §151.205, Respondent will do the following:
 - a. Within 15 days of the Department's notification to Respondent of said withdrawal, suspension, abandonment or denial, notify its existing Texas headquartered employer-clients that it will cease providing money transmission to them. This notification must

- be made in writing, and a copy of the notice must be sent contemporaneously to the Department;
- b. Within 60 days of the Department's notification to Respondent of said withdrawal, suspension, abandonment or denial, cease and desist from engaging in the unauthorized business of money transmission in Texas and have returned to its customers all Texas headquartered employer-client funds held by Respondent; and
 - c. Within seven days of achieving full compliance with this paragraph, Respondent must confirm to the Department in writing that it has ceased all unlicensed activities in Texas.

Effective Date

This Order against Paycom is effective on the date signed by the Commissioner and is final and non-appealable as of that date.

Signed on this 23rd day of October, 2018

/s/ Charles G. Cooper
Charles G. Cooper
Commissioner, Department of Banking

AGREED AS TO FORM AND SUBSTANCE

Paycom Software, Inc.

/s/ Craig E. Boelte
By: Craig E. Boelte

Date: October 23, 2018

Paycom Payroll, LLC

/s/ Craig E. Boelte
By: Craig E. Boelte

Date: October 23, 2018

APPROVED AS TO FORM:

/s/ John Podvin, Jr.
F. John Podvin, Jr.
Shapiro, Biegging, Barber, Otteson LLP
Counsel for Paycom Software, Inc. and Paycom Payroll, LLC

Date: October 23, 2018

/s/ Marcus Adams
Marcus Adams
Assistant General Counsel
Texas Department of Banking

Date: October 23, 2018