



San Francisco Will Require Employers to Offer Transportation Benefits

San Francisco Mayor Gavin Newsom signed into law an ordinance that will require employers with at least twenty employees to offer their workers at least one of three transportation benefit options. Under the new mandate, employers must have appropriate programs in place by mid-January 2009.

Background

On June 10, 2008, Supervisor Ross Mirkarimi introduced legislation that would require San Francisco employers to offer employees transportation benefits to encourage their use of public transit or van pools. On August 12, the San Francisco Board of Supervisors unanimously approved [Ordinance No. 199-08](#), adding the employer mandate as Section 421 of the San Francisco Environment Code. This mandate, the first of its kind in the nation, has now been signed into law.

The New Employer Mandate

The new employer mandate requires private sector employers with an average of twenty or more employees per week to provide incentives for their employees to commute using public transportation. Although all full-time, part-time and temporary employees (including those made available through temporary services or staffing agencies) who work either in or outside of San Francisco are counted for determining which employers are subject to the law, only employees who work at least ten hours per week in San Francisco must be offered voluntary participation in a transportation benefit program.

Under the new ordinance, employers must offer at least one of the following three transportation benefit options to covered employees –

- a program under Internal Revenue Code Section 132(f) allowing employees to make pre-tax contributions to pay for transit passes or vanpool charges (but not for parking) up to the maximum level permitted by federal law
- transit passes or reimbursements for vanpool charges, not to exceed the cost of an adult San Francisco MUNI Fast Pass (presently \$45 per month)

- door-to-door shuttle service through a van-pooling or similar program at no cost to employees.

BUCK COMMENT. *By implementing the pre-tax transportation benefit option, employers could reduce payroll taxes while providing a benefit to their employees. Largely for that reason, the transportation benefit proposal, unlike San Francisco's employer health spending mandate (see our January 24, 2008 [For Your Information](#)), had the backing of the San Francisco Chamber of Commerce and other business groups.*

Enforcement and Penalties

San Francisco's Department of the Environment, in consultation with the San Francisco Office of Labor Standards Enforcement, is charged with issuing rules and regulations to implement the new ordinance, which are to conform to IRS regulations and other San Francisco ordinances. Civil penalties for noncompliance, including a fine not to exceed \$100 for the first violation, \$200 for the second violation within the same year, and \$500 for each additional violation within the same year, or administrative fines may be assessed, but not both. San Francisco's enforcement costs may also be recovered.

Effective Date

The ordinance will take effect on September 22, 2008. Employers will be required to have an appropriate transportation benefit program in place within 120 days of that date – i.e., by mid-January 2009.

Conclusion

Employers must act quickly to ensure that they have a compliant transportation benefit program in place at the beginning of next year. Payroll systems should be reviewed and may have to be adjusted once a benefit option is selected. Buck's consultants would be pleased to assist you in preparing to meet San Francisco's new commuter benefit mandate.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.