

San Francisco Bay Area Commuter Benefits Program Made Permanent

On September 22, Governor Jerry Brown signed into law a bill that continues a regional pilot program aimed at encouraging employees in the Bay Area to use commute alternatives to driving alone on a permanent basis. The program, launched in 2014, requires employers with 50 or more employees in the Bay Area to offer certain commuter benefits to their employees. Employers will want to review and, as needed, update their benefit programs to ensure compliance.

Background

In 2009, San Francisco, Berkeley and Richmond, California and the San Francisco International Airport adopted local commuter benefit ordinances requiring covered employers to provide programs that encourage employees to use public transit or carpool. The ordinances provided the model for the Bay Area Commuter Benefits Program, a regional pilot program developed by the Metropolitan Transportation Commission (MTC) and the Bay Area Air Quality Management District (Air District) that expanded the employer mandate to include the nine counties surrounding San Francisco Bay in 2014. (See our [May 13, 2014 For Your Information](#).)

The Bay Area program, with a sunset date of January 1, 2017, requires public, private and nonprofit employers with at least 50 full-time employees in Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, southern Sonoma, and southwestern Solano counties to provide commuter benefit options that encourage employees to use public transit or carpool to work. Under the program, covered employers must offer employees who work an average of 20 hours per week (excluding seasonal and temporary employees) within those counties one of four commuter benefit options:

- Pretax benefit for transit passes or vanpool expenses, as permitted by federal law (currently up to \$255 per month)
- Employer-paid transit or vanpool subsidy (up to the monthly cost of commuting or \$75, whichever is lower)
- Employer-provided transit by low-cost or free shuttle, vanpool or bus service



- Alternative commuter benefit as effective in reducing single-occupancy commute trips as other options (such as carpooling, bicycling, walking, telecommuting and compressed work week schedules)

Comment. New York City and Washington, DC enacted similar ordinances that required employers with 20 or more employees to offer commuter benefits to eligible employees working in the city or district beginning January 1, 2016. (See our [December 7, 2015](#) and [August 23, 2016](#) *For Your Information* publications.)

Bay Area Program Becomes Permanent

On September 22, California Governor Jerry Brown signed into law a bill ([SB 1128](#)) that removes the sunset for the Bay Area Commuter Benefits Program and authorizes the MTC and Air District to jointly continue the program on a permanent basis. Notably, the new law removes bicycle commuting as a pretax option under the program. Instead, it expands the program's employer-paid benefit option to include bicycle commuting, allowing employers in their discretion to offer a bicycle commuting subsidy to employees of up to \$20 per month. Finally, the law eliminates the requirement for the MTC and Air District to further report to the legislature on the results of the program in expanding access to commuter benefits and reducing vehicle commute trips and emissions.

In Closing

Employers subject to the Bay Area Commuter Benefits Program were required to put a transportation benefit program for covered employees in place in 2014. Initially enacted as a pilot program through 2016, it has now been made permanent, with modest changes. Employers will want to review and, as needed, update their benefit programs to ensure compliance.

Qualified Transportation Fringe Benefits

Federal law allows — but does not require — employers to offer employees the opportunity to pay for qualified commuting expenses with pretax dollars. Section 132(f) of the Internal Revenue Code excludes “qualified transportation fringe benefits” from an employee’s gross income, subject to certain limits. Qualified benefits include transit passes, qualified parking, and the cost of transportation in a commuter highway vehicle between home and work. Currently, federal law permits employees to use up to \$255 a month of their pretax income to pay for qualified transportation.

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