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New Jersey to Require Employers to Offer Pretax Transit Benefits

Last month, New Jersey became the first state to enact a commuter benefits law requiring employers to offer pretax transit benefits. The law will become operative on March 1, 2020 or the date that regulations to be issued by the Commissioner of Labor and Workforce Development become effective, whichever is earlier. Employers should review their current benefit offerings and begin taking any needed steps to ensure compliance.

Volume 42

Issue 40

April 18, 2019

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Background

Federal law allows 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 monthly limits. The limit for 2019 is \$265 per month per employee. Qualified transportation fringe benefits include transit passes, qualified parking, and the cost of transportation in a commuter highway vehicle between home and work.

Buck Comment. While the Tax Cuts and Jobs Act of 2017 eliminated the employer deduction for the expense of providing qualified employee transportation fringe benefits such as parking allowances, mass transit passes and van pooling, employees may still receive those benefits on a tax-free basis.

Even though federal law does not require employers to offer commuter benefits programs, some local ordinances do. For example, San Francisco, Berkeley, and Richmond, California and the San Francisco International Airport have required covered employers to provide programs that encourage employees to use public transit or carpool since 2009. In 2014, employers in the nine counties surrounding San Francisco Bay were required to offer commuter benefits as part of a regional pilot program. The pilot program was made permanent two years later. (See our [September 30, 2016 For Your Information](#).) Employers in both New York City and the District of Columbia have had to provide pretax commuter benefits programs for employees since 2016. (See our [December 7, 2015](#) and [August 23, 2016 For Your Information](#) publications.) Most recently, Seattle

passed a Commuter Benefits Ordinance that will require employers to offer a pretax transit benefit to their employees beginning next year.

New Jersey's Transit Benefit

On March 1, New Jersey Governor Phil Murphy signed the New Jersey Transit Benefits Law (Senate Bill No. 1567), making New Jersey the first state to mandate a pretax transportation fringe benefit for employees. With limited exceptions, the new law will require employers with 20 or more employees to offer employees the opportunity to purchase certain transportation services, including transit passes and parking passes, with pretax dollars. Smaller employers are exempt.

Both private employers and public employers, other than the federal government, are subject to the new mandate. Covered employers will be required to offer pretax transit benefits to employees represented by a union, but only after collective bargaining agreements in effect on March 1, 2019 expire.

The new law, which will be enforced by the New Jersey Commissioner of Labor and Workplace Development (Labor Commissioner), will require covered employers to offer employees the opportunity to use pretax earnings to purchase qualified transportation fringe benefits — commuter highway vehicle benefits (vanpooling), transit passes, and qualified parking — in accordance with federal law. Transit benefits must be provided at the maximum levels federal law allows — up to \$265 per month per employee for 2019.

Enforcement and penalties

The transit benefits law took effect on March 1, 2019, but will remain inoperative until March 1, 2020, or the effective date of implementing rules and regulations adopted by the Labor Commissioner, whichever date is earlier. The Labor Commissioner will not impose penalties for noncompliance prior to that date.

Penalties for failing to offer required transit benefits will range between \$100 and \$250 for a first violation. Employers will have a 90-day window to cure a first violation and will be able to avoid penalties if they come into compliance during that period. After the window closes, each additional 30-day period in which the employer fails to offer the requisite benefit will constitute a subsequent violation, subject to a penalty of \$250.

In closing

While many New Jersey employers — particularly larger employers — may already offer pretax transportation fringe benefits, the new law will require other employers to put commuter benefits programs in place. Employers should review their current benefit offerings and begin taking any needed steps to ensure compliance with the new law.

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