



APRIL 2, 2019

New Jersey Employers Must Offer Pre-Tax Transportation Benefits to Employees

New Jersey Governor Phil Murphy recently approved legislation that represents the nation's first state-wide requirement to offer commuter benefits to employees. The law, Senate Bill No. 1567 ("New Jersey Transit Benefits Law" or the "Law"), requires New Jersey employers that employ 20 or more employees to offer pre-tax transportation fringe benefits to employees. Employers must implement these benefits by March 1, 2020, or the effective date of the New Jersey Department of Labor and Workforce regulations, whichever occurs first.

Various cities have enacted similar pre-tax transportation fringe benefits laws at a local level, including New York City, Washington, D.C., San Francisco, and Seattle.

Covered Employees

Under the New Jersey Transit Benefits Law, an employee is one who is hired or employed by the employer and who reports to the employer's work location. Such definition mirrors the one used in New Jersey's unemployment compensation law. Employers are not required to provide transit benefits to employees who are currently covered under a collective bargaining agreement until the expiration of the agreement. For federal government employees, if the employee is eligible for a transit benefit due to employment with the government, then the federal government will not be required to provide pre-tax transportation fringe benefits.

Commuter Benefits

Employers must offer a pre-tax election transportation fringe benefit that provides commuter highway vehicle and transit benefits, consistent with the provisions of the federal tax code, [Internal Revenue Code \(“IRC”\) § 132\(f\)](#). The benefits must be provided at the maximum benefit levels permitted under federal law, to be deducted for those programs from an employee’s gross income under IRC § 132(f). For the [2019](#) taxable year, the maximum benefit levels are \$265 per month for commuter highway vehicle benefits and any transit pass, and \$265 per month for qualified parking.

No Tax Deduction Permitted for Employers

Employers will not be permitted to deduct the expense of the pre-tax transportation benefits from federal corporate income taxes. The 2017 Tax Cuts and Jobs Act, PL 115-19, amended Section 274 of the IRC to eliminate the employer deductions for qualified transportation fringe benefits that are excluded from employees’ taxable income.

Compliance Deadline

Although the New Jersey Transit Benefits Law takes effect immediately, the legislation specifies that it is “inoperative” for 365 days following the date of enactment, or upon the effective date of the rules and regulations adopted by the New Jersey Department of Labor and Workforce regulations, whichever occurs first. As such, the Law will not be enforced until March 1, 2020, unless final regulations are adopted on an earlier date.

Penalties for Noncompliance

Pursuant to the Law, any employer who fails to provide pre-tax transportation fringe benefits will be liable for a civil penalty between \$100 and \$250 for a first violation. Employers will have 90 days to offer commuter benefits before the civil penalty is imposed. After 90 days, each additional 30-day period in which an employer fails to offer the commuter benefits will be considered a subsequent violation, incurring a penalty of \$250 for each violation. Any penalties incurred may be recovered with costs and interest charges, if applicable, in a summary proceeding.

Takeaway for Employers

New Jersey employers that do not currently offer pre-tax transportation fringe benefits will need to offer a transit benefits program. Employers should consider adopting such a program as soon as possible, instead of waiting until March 1, 2020, as the implementing regulations may be adopted earlier. Employers may also want to discuss the tax implications of a transit benefit program with their tax advisors.

As a reminder, New York City employers are required to comply with New York City's Commuter Benefits Law, which requires private employers with 20 or more full-time, non-union employees in New York City to offer covered employees the opportunity to enroll in commuter benefits programs to pay for mass transit costs with pre-tax earnings.

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If you have any questions regarding the transit benefit programs and requirements, please do not hesitate to contact us.

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