

New Jersey Becomes First State to Require Employers to Offer Pre-Tax Transportation Fringe Benefits

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On March 1, 2019, when Governor Phil Murphy signed into law [Senate Bill No. 1567](#), “An Act concerning pre-tax transportation fringe benefits” (“NJ Transit Benefits Law” or “Law”), New Jersey became the first state to require employers to offer pre-tax transportation fringe benefits (“Transit Benefits”) to employees. In a [press release](#) published by his office, Governor Murphy stated that “[p]roviding this pre-tax benefit to commuters throughout our state will reduce the financial burden of fares and parking costs, resulting in significant savings.”

The NJ Transit Benefits Law joins similar local pre-tax transportation fringe benefits laws already in effect in various cities, including [New York City](#), [Washington, DC](#) (see our [previous blog post](#)), [San Francisco](#), the [nine-county San Francisco Bay Area](#), and [Seattle](#).

Who Is Subject to the NJ Transit Benefits Law?

Under the NJ Transit Benefits Law, every employer subject to New Jersey’s unemployment compensation law that employs at least 20 employees is required to offer Transit Benefits to all employees who are not currently covered by a collective bargaining agreement.

Governor Murphy clarified in a [signing statement](#) that the Law will not apply to the federal government in its capacity as an “employer.” There appears to be no exception for nonprofits or state or local governmental employers, though implementing regulations may further clarify the scope of employers subject to the Law.

For employers with fewer than 20 employees, including union-represented employees, there is no requirement to offer Transit Benefits at this time. As to employees represented by a union, the effective date of the Law is tied to the dates of their collective bargaining agreements. Employers with 20 or more employees that have union-represented employees are required to offer Transit Benefits to their union-represented employees only once their collective bargaining agreements that were in effect on March 1, 2019, expire. Therefore, the subject of Transit Benefits should be included in the negotiation of any new or renewal collective bargaining agreement that takes effect after March 1, 2019.

What Transit Benefits Must Employers Offer?

Under the Law, employers must provide pre-tax election transportation fringe benefits that provide commuter highway vehicle and transit benefits, consistent with “the provision and limits” of Section 132(f)(1) of the Internal Revenue Code (“Code”), namely, (i) commuter highway vehicle benefits, (ii) any transit pass, and (iii) qualified parking.

The Law also requires that the Transit Benefits be provided “at the maximum benefit levels” allowable under federal law, to be deducted for those programs from an employee’s gross income pursuant to Section 132(f)(2) of the Code. For 2019, the maximum benefit levels allowable are \$265/month for commuter highway vehicle benefits (“vanpooling”) and any transit pass (combined), and \$265/month for qualified parking.

Tax Note

The federal Tax Cuts and Jobs Act of 2017 (“TCJA”) removed qualified bicycle commuting reimbursements from the definition of “qualified transportation fringe” for years beginning after 2017 and before 2026, making them taxable for that eight-year suspension period. The TCJA also provides that no deduction is allowed for qualified transportation benefits (whether provided directly by an employer, through a bona fide reimbursement arrangement, or through a compensation reduction agreement) incurred or paid after 2017, with the exception of transportation for employee safety and qualified bicycle commuting benefits. While employers may no longer deduct payments for qualified transportation benefits, the fringe benefit exclusion rules still apply and the payments may be excluded from employees’ wages.

What Is the Deadline to Comply with the NJ Transit Benefits Law?

The Law became effective immediately upon signature on March 1, 2019, but states that it is “inoperative” (meaning, no penalties will be assessed against employers for noncompliance) until the **earlier of** March 1, 2020, or the effective date of implementing rules and regulations by the New Jersey Commissioner of Labor and Workplace Development (“Labor Commissioner”). Based on language in the Law, implementing rules and regulations should be “in a manner that is most compatible with current practices for providing pre-tax transportation fringe benefits.” Those rules and regulations may address how, for purposes of the Law, a Transit Benefit program should be documented and any other administrative requirements. As of the date of this Advisory, the Labor Commissioner has not yet adopted those rules and regulations. As noted above, the effective date as to union-represented employees is tied to the expiration date of any collective bargaining agreement in effect as of March 1, 2019.

What Penalties Apply for Noncompliance?

Under the Law, the Labor Commissioner is required to ensure that employers offer Transit Benefits and may issue citations for noncompliance. Any employer that fails to offer Transit Benefits to employees as required under the Law will be subject to a penalty of not less than \$100 and not more than \$250 for a first violation. The employer will have 90 days to offer the employees Transit Benefits before the penalty is imposed. If the employer continues to not offer such benefits after 90 days, each additional 30 days in

which the employer fails to make such offer will be considered a subsequent violation, subject to a penalty of \$250.

Penalties will not be imposed on any individual employer more than once every 30 days. Any penalty incurred under the Law can be recovered with costs, and, if applicable, interest charges, in a summary proceeding.

What New Jersey Employers Should Do Now

Since the Law currently is “inoperative” until March 1, 2020 (unless the Labor Commissioner adopts implementing regulations earlier), employers that will be subject to the Law do not need to immediately comply. However, employers may want to do the following:

- Start taking steps to establish a Transit Benefits program (such as exploring options with third-party vendors), and consider adopting a Transit Benefits program as soon as possible (rather than waiting until March 1, 2020, if rules and regulations are not adopted earlier).
- If you are subject to the Law and employ employees currently covered by collective bargaining agreements and/or represented by a union, be prepared to address Transit Benefits, if you do not already do so, when bargaining new contracts or renewal contracts, to avoid applicable civil penalties.
- Prepare to respond to employee inquiries about the Law since the Law requires the New Jersey Transit Corporation, in conjunction with the New Jersey Turnpike Authority and the South Jersey Transportation Authority, to conduct a public awareness campaign encouraging the public to contact employers about Transit Benefits.
- Monitor for implementing rules and regulations on the administration and enforcement of the Law in order to be aware of and meet any additional requirements.

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