



New Jersey Passes Law Requiring Most Employers to Offer Pre-Tax Transportation Fringe Benefits

Client Advisories

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Earlier this year, in an effort to encourage employees to utilize public transportation and van pooling when traveling to and from work, Governor Murphy signed a law making New Jersey the first state in the nation to require most employers to offer a pre-tax transportation fringe "benefit" to their employees. This "benefit" - at a minimum - requires employers to establish a payroll mechanism whereby employees can deduct covered transportation expenses on a pre-tax basis. The law will become operative at the latest on March 1, 2020. It will become effective earlier than March 1, 2020 if the New Jersey Department of Labor and Workforce Development adopts final rules and regulations before then on this new law.

This new law has a straightforward requirement. Employers must now allow employees to deduct covered transportation expenses on a pre-tax basis from their paychecks. The covered transportation expenses are those that would be permissible pre-tax deductions under federal tax law for commuter expenses. They are most commonly used for public transportation expenses, including parking at a public transit facility. In addition, vanpool fees are covered, although those have specific requirements of at least six passengers and vanpool fees.

The law applies to employers with 20 or more employees. Employers of workers covered by collective bargaining agreements will not have to offer the benefit until the expiration of the current collective bargaining agreement. Employers who fail to comply with the law will face penalties of \$100 to \$250 for a first violation, and then an additional \$250 penalty every 90 days after that, along with interest and court costs if an enforcement action is brought.

This new law does not require that the employer subsidize any portion of this pre-tax benefit. Employers may choose to do so as an added benefit, but the minimum requirement is setting up dedicated accounts for these funds. Further, employers are not responsible if employees misuse these funds. At the present time, there are no formal notice requirements that must be provided to employees, but those may be added as part of the forthcoming regulations.

To avoid this penalty, employers should review their benefits packages now and discuss this with their payroll company or benefits provider, before the law becomes operative, to make sure they are in compliance. If you have questions about this law, or would like your materials reviewed, please contact **Peter Frattarelli** or any member of Archer & Greiner's **Labor and Employment Group** in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

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