

EMPLOYEE BENEFITS

State and Local Commuter Benefit Mandates

Updated: September 2023

General Rules Surrounding Commuter Benefits

IRS Rules Surrounding Commuter Benefits

Under the Federal Internal Revenue Code¹, employers may provide qualified transportation/commuter benefit programs to their employees on a pre-tax basis, subject to certain IRS limits. These programs may include qualified parking, transit passes, commuter expense reimbursement programs and transportation to and from work in a commuter highway vehicle² (“vanpooling”). The IRS limits for calendar year 2023 are \$300 per month for qualified transit expense reimbursement and vanpooling and \$300 per month for qualified parking. The 2024 limits have not yet been announced.

Previously, employees could receive “qualified bicycle commuting reimbursements” on a non-taxable basis if they were funded by an employer. However, due to the Tax Cuts and Jobs Act (passed in 2017), employees can no longer receive these reimbursements on a non-taxable basis until at least January 1, 2026. Accordingly, bicycle commuting reimbursements that would have been considered a qualified transportation reimbursement expense are considered taxable income to the employee for the foreseeable, albeit limited, future.

¹ 26 U.S. Code Section 132 – Certain Fringe Benefits

² To qualify, the commuter highway vehicle must “...seat at least 6 adults [excluding the driver], and the employer must reasonably expect that at least 80% of the vehicle mileage will be for transporting employees between their homes and work-place with employees occupying at least one-half the vehicle’s seats [excluding the driver]” 2023 Publication 15-B, page 21

Employees that elect to enroll in a commuter benefit program can save FICA, federal income taxes, and, in some places, state income taxes on qualified expenses. Employers could also save on payroll taxes (FICA and FUTA) on amounts employees set aside in the program, which generally offset any administrative costs of the program. Although an employer may reimburse employees for their commuter expenses, the IRS expressly prohibits employers from directly reimbursing the cost of an employee’s transit pass if transit passes (including certain debit and smart cards) are readily available for distribution to employees.



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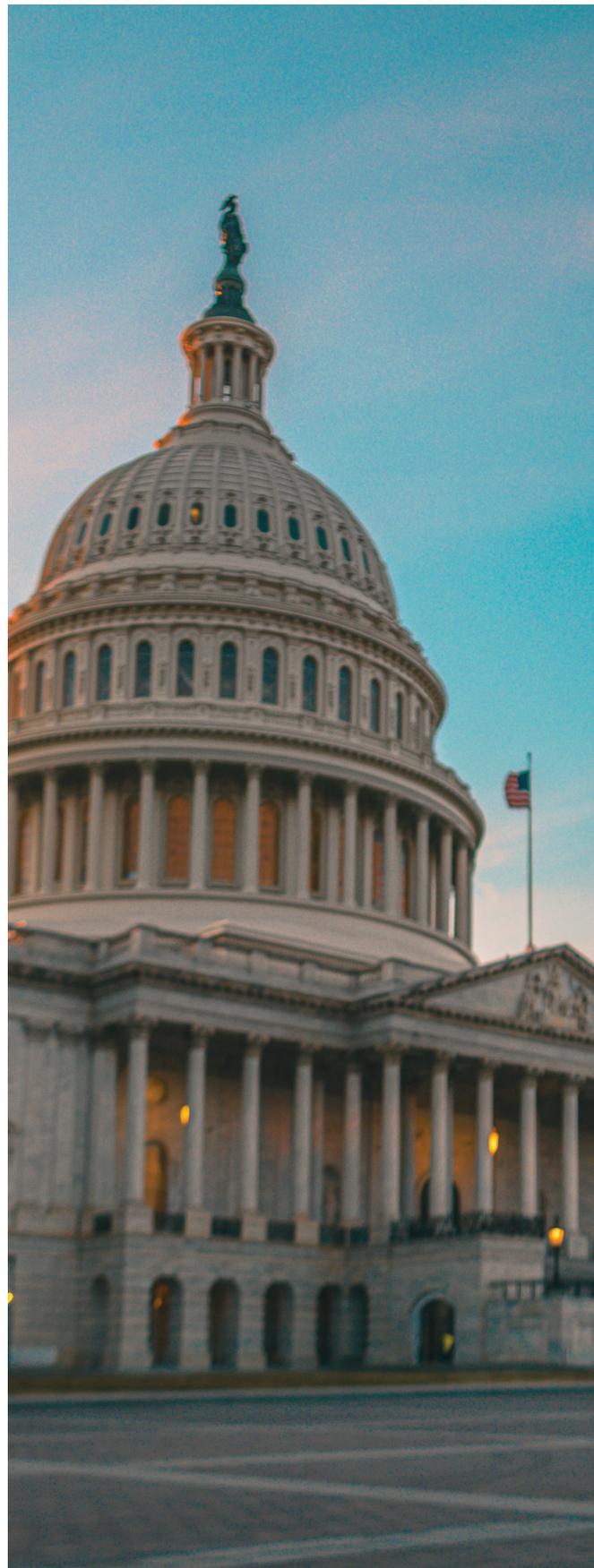
State and Local Commuter Benefits Legislation

A growing number of cities and regional areas (including the state of New Jersey) have passed laws or ordinances requiring certain employers to provide an avenue for employees to receive pre-tax commuter benefits. Many of these laws allow employers to provide this benefit in the following ways:

- 1) **Establish a Pre-Tax Qualified Transportation Assistance Program** - Under this category, employees contribute pre-tax dollars to a commuter flexible spending account (FSA) and receive direct reimbursement of their commuter expenses without taxation, subject to Federal IRS maximum monthly limits. The Federal IRS maximum monthly limit adjusts most years pursuant to inflation. Employers may also subsidize some of the expense towards employees' qualified transportation expenses but are not required to do so. An employer may provide funding for employees' transit expenses up to the monthly inflationary amount set by the IRS, less any pre-tax transit expense reimbursements the employee receives from other sources (e.g., employee pre-tax contributions to a commuter FSA) that month.
- 2) **Employer Purchased Transportation Vouchers** - An employer may purchase transportation vouchers and directly provide those transportation vouchers to employees.
- 3) **Employer Provided Commuter Highway Vehicle** - Employers may provide a commuter vehicle that transports employees to and from employees' respective neighborhoods and an employer's worksite location.

Many of the ordinances and laws specifically mention the requirement or option to offer a qualified bicycle commuting expense reimbursement program. However, as mentioned above, qualified bicycle commuting expense reimbursements will be considered taxable under the federal tax code for the eight year period of 2018 through 2025.

The resource below provides a link to certain laws, and where available, a link to the official website regarding the mandated state/regional/local commuter benefit program. The information provided may not reflect each and every applicable law in every state and/or locality.



CA - Bay Area

(which includes the following counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma)

Law:

[Bay Area Air Quality Management District Regulation 14, Rule 1](#)

Official Website:

<https://511.org/employers/commuter-benefits-program>

Covered Employee.

“An employee who performed an average of at least 20 hours of work per week within the previous calendar month within the geographic boundaries of the [Bay Area Air Quality Management District] excluding a seasonal/temporary employee (an employee who works for the employer 120 days or less within the calendar year.)”

Covered Employer.

“all public, private, and non-profit employers for which an average of 50 or more full-time employees per week perform work for monetary compensation within the geographic boundaries of the Bay Area Air Quality Management District”

Required Benefit.

“Each employer subject to this rule must offer, either directly or through a TMA...at least one of the following commuter benefit options to all covered employees.

Option 1: Pre-tax option: A program, consistent with Section 132(f) of the Internal Revenue Code, allowing covered employees to elect to exclude from taxable wages costs incurred for transit passes or vanpool charges, up to the maximum amount allowed by federal tax law.

Option 2: Employer-paid benefit: A program whereby the employer offers employees a subsidy to offset the monthly cost of commuting via transit or by vanpool. In 2013, the subsidy shall be equal to either the monthly cost of commuting via transit or vanpool, or seventy-five dollars (\$75), whichever is lower. The APCO shall annually adjust this amount consistent with the California Consumer Price Index for San Francisco-Oakland-San Jose. An employer may also elect to provide a subsidy for bicycle commuting costs in addition to subsidies for transit and vanpool costs.

Option 3: Employer-provided transit: Transportation furnished by the employer at no cost, or low cost as determined by the APCO, to employees in a vanpool or bus, or similar multi-passenger vehicle operated by or for the employer.”

CA - Berkeley

Law:

[Berkeley Municipal Code 9.88](#)

Official Website:

<https://berkeleyca.gov/doing-business/operating-berkeley/tracc-commuter-benefits#TRACC>

Covered Employee.

“any person who:

1. Performed an average of at least ten (10) hours of work per week for compensation within the geographic boundaries of Berkeley for the same employer within the previous twelve (12) months; and
2. Qualifies as an employee entitled to payment of a minimum wage from the employer under the California minimum wage law...or is a participant in a welfare-to-work program.”

Covered Employer.

“an employer, as defined in Section 18 of the California Labor Code, for which an average of ten (10) or more persons per week performs work for compensation.

In determining the number of covered employees performing work for an employer during a given week, all persons performing work for compensation on a full-time, part-time or temporary basis, including those who perform work outside of the geographic boundaries of Berkeley, shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity. “Covered employer” shall not include any governmental entity.”

Required Benefit.

“all covered employers shall provide at least one of the following transportation benefit programs to covered employees:

A Pre-Tax Election.

A program, consistent with allowable pre-tax commute benefits, except parking benefits, allowed by Internal Revenue Code Section 132(f), allowing employees to elect to exclude from taxable wages and compensation employee commuting costs incurred for transit expenses, vanpool expenses, or bicycle expenses, up to the maximum level allowed by federal tax law; or

Employer Paid Benefit.

A program whereby the employer supplies an annual, monthly or other form of transit pass, or reimbursement for equivalent vanpool expenses at least equal in value to the purchase of the appropriate benefit which shall not exceed the cost of an adult monthly AC Transit regular pass, for the public transit system requested by each employee or to reimburse qualified vanpool charges; or

Employer Provided Transit.

Commute transportation furnished by the employer at no cost to the employee in a vanpool or bus, or similar multi-passenger vehicle operated by or for the employer.”

CA - Los Angeles

Law:

[CA Govt Code § 65080.9 \(2019\)](#)

Official Website:

N/A

Covered Employer.

“any employer for which an average of 50 or more employees perform work for compensation at a worksite within the area where the ordinance adopted pursuant to this section operates. In determining the number of employees performing work for an employer during a given week, only employees performing work on a full-time basis shall be counted.”

Covered Employee.

“an employee who performed at least an average of 20 hours of work per week within the previous calendar month within the area where the ordinance adopted pursuant to this section operates.”

Required Benefit.

The ordinance “requires covered employers operating within the [Los Angeles Metropolitan Transport Authority’s] area to offer all covered employees a pretax option program, consistent with Section 132(f) of the Internal Revenue Code, allowing covered employees to elect to exclude from taxable wages employee commuting costs incurred for transit passes or vanpool charges, up to the maximum amount allowed by federal tax law.”



CA - Richmond

Law:

[City of Richmond Municipal Code Ch. 9.62](#)

Official Website:

<https://www.ci.richmond.ca.us/3119/Commuter-Benefits-Ordinance>

Covered Employer.

“an employer for which an average of ten (10) or more persons per week performs work for compensation. In determining the number of persons performing work for an employer during a given week, all persons performing work for compensation on a full-time, part-time or temporary basis, including those who perform work outside of the geographic boundaries of Richmond, shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity.”

Covered Employee.

“any person who:

1. Performs an average of at least ten (10) hours of work per week for compensation over a ninety-day period within the geographic boundaries of Richmond for the same employer; and
2. Qualifies as an employee entitled to payment of a minimum wage from the employer under the California minimum wage law, ... or is a participant in a Welfare-to-Work Program.”

Required Benefit.

“all covered employers shall provide at least one of the following transportation benefit programs to covered employees:

A Pre-Tax Election. A program, consistent with Internal Revenue Code Section 132(f), allowing employees to elect to exclude from taxable wages and compensation, employee commuting costs incurred for transit passes or vanpool charges or bicycle commuting (but not for parking), up to maximum level allowed by federal tax law...; or

Employer Paid Benefit. A program whereby the employer supplies a transit pass or reimbursement for equivalent vanpool charges at least equal in value to the purchase of the appropriate benefit which shall not exceed the cost of an adult monthly AC Transit regular pass... for the public transit system requested by each employee or to reimburse qualified vanpool charges; or

Employer Provided Transit. Transportation furnished by the employer at no cost to the employee in a vanpool or bus, or similar multi-passenger vehicle operated by or for the employer.”

CA - San Francisco (city)

Law:

[San Francisco Environment Code Sec. 427](#)

Official Website:

<https://sfenvironment.org/commuter-benefits-ordinance-sf>

Covered Employee.

“any person who:

- (A) Performed an average of at least ten (10) hours of work per week for compensation within the geographic boundaries of San Francisco for the same employer within the previous calendar month; and
- (B) Qualifies as an employee entitled to payment of a minimum wage from the employer under the California minimum wage law... or is a participant in a Welfare-to-Work Program.”

Covered Employer.

“an employer for which an average of twenty (20) or more persons per week perform work for compensation. In determining the number of persons performing work for an employer during a given week, all persons performing work for compensation on a full-time, part-time or temporary basis, including those who perform work outside of the geographic boundaries of San Francisco, shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity.”

Required Benefit.

“All Covered Employers shall provide at least one of the following transportation benefit programs to Covered Employees:

- (1) A Pre-Tax Election: A program, consistent with [Internal Revenue Code] § 132(f), allowing employees to elect to exclude from taxable wages and compensation, employee commuting costs incurred for transit passes or vanpool charges (but not for parking), up to maximum level allowed by [Internal Revenue Code] 132 (f)(2)(A);
- (2) Employer Paid Benefit: A program whereby the employer supplies a transit pass for the public transit system requested by each Covered Employee or reimbursement for equivalent vanpool charges at least equal in value to the purchase price of the appropriate benefit, which shall not exceed the cost of an adult San Francisco MUNI Fast Pass; or
- (3) Employer Provided Transit: Transportation furnished by the employer at no cost to the covered employee in a vanpool or bus, or similar multi-passenger vehicle operated by or for the employer.”

D.C. - District of Columbia

Law:

[D.C. Law 20-142 Sec. 302](#)

(Amended by [D.C. Law 23-113](#))

Official Website:

<https://godcgo.com/employer/>

Covered Employee.

All employees of a covered employer, pursuant to the below definition of employee:

“The term “employee” includes any individual employed by an employer, except that this term shall not include:

- (A) Any individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or nonprofit organization;
- (B) Any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions;
- (C) Any individual employed as a casual babysitter, in or about the residence of the employer; or
- (D) An independent contractor.”

Covered Employer.

“an employer with 20 or more employees; provided that the Mayor may issue rules ... to expand the definition to include employers with fewer than 20 employees.”

Required Benefit.

“a covered employer shall provide at least one of the following benefit programs to its employees:

- (1) A pre-tax election transportation fringe benefits program that provides commuter highway vehicle, transit or bicycling benefits consistent with section 132(f)(1)(A), (B) and (D) of the Internal Revenue Code at benefit levels at least equal to the maximum amount that may be deducted for those programs from an employee’s gross income pursuant to section 132(f)(2) of the Internal Revenue Code;
- (2) An employer-paid benefit program whereby the employer supplies, at the election of the employee, a transit pass for the public transit system requested by each covered employee or reimbursement of vanpool or bicycling costs in amount at least equal to the purchase price of a transit pass for an equivalent trip on a public transit system; or
- (3) Employer-provided transportation at no cost to the covered employee in a vanpool or bus operated by or for the employer.”

IL - Illinois (state-wide) (effective 1/1/24)

Law:

[Transportation Benefits Program Act](#)

Official Website:

N/A

Covered Employee.

“Any person who performs an average of at least 35 hours of work per week for compensation on a full-time basis.”

Covered Employer.

An employer that:

- (1) “is located in: Cook County; Warren Township in Lake County; Grant Township in Lake County; Frankfort Township in Will County; Wheatland Township in Will County; Addison Township; Bloomingdale Township; York Township; Milton Township; Winfield Township; Downers Grove Township; Lisle Township; Naperville Township; Dundee Township; Elgin Township; St. Charles Township; Geneva Township; Batavia Township; Aurora Township; Zion Township; Benton Township; Waukegan Township; Avon Township; Libertyville Township; Shields Township; Vernon Township; West Deerfield Township; Deerfield Township; McHenry Township; Nunda Township; Algonquin Township; DuPage Township; Homer Township; Lockport Township; Plainfield Township; New Lenox Township; Joliet Township; or Troy Township; and
- (2) employs 50 or more covered employees in a geographic area specified in paragraph (1) at an address that is located within one mile of fixed-route transit service.”

Required Benefit.

“All covered employers shall provide a pre-tax commuter benefit to covered employees.”

Option 1: Pre-tax option: A covered employer must offer a program, consistent with Section 132(f) of the Internal Revenue Code, allowing covered employees to elect to exclude from taxable wages costs incurred for transit passes, up to the maximum amount allowed by federal tax law.

Option 2: Public program: “A covered employer may comply ... by participating in a program offered by the Chicago Transit Authority or the Regional Transportation Authority.”



NJ - New Jersey (state-wide)

Law:

[NJ P.L. 2019, c.38](#)

Official Website:

N/A (the [DOL](#) is responsible for the administration of the law)

Covered Employee.

An “Employee’.... as provided in the ‘unemployment compensation law,’ [\(R.S.43:21-1 et seq.\)](#).”

Covered Employer.

An “Employer’... as provided in the ‘unemployment compensation law,’ [\(R.S.43:21-1 et seq.\)](#).”

Required Benefit.

“Every employer in the State of New Jersey that employs at least 20 persons shall offer to all of that employer’s employees the opportunity to utilize a pre-tax transportation fringe benefit.”

Pre-tax transportation fringe benefit:

“a pre-tax election transportation fringe benefit that provides commuter highway vehicle and transit benefits, consistent with the provisions and limits of section 132(f)(1) of the United States Internal Revenue Code... 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 United States Internal Revenue Code...”

“an employer shall not be required to offer the opportunity to utilize a pre-tax transportation fringe benefit to employees covered by a collective bargaining agreement until the expiration of any collective bargaining agreement covering those employees that is in effect on the effective date of P.L.2019, c.38 (C.27:26A-16 et al.)”

NY - New York City

Law:

[Local Law 53 NYC](#)

Official Website:

<https://www1.nyc.gov/site/dca/about/commuter-benefits-law.page>

Covered Employee.

““full-time employees” which “mean employees who work an average of thirty hours or more per week for [a covered employer]”

Covered Employer.

“every employer with twenty or more full-time employees in the city of New York”

However, the commuter requirement “shall not apply

- (i) to the United States government, the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary, or the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207;
- (ii) where a collective bargaining agreement exists between any group of employees and an employer, except where the number of full-time employees not covered by any such agreement is twenty or more, in which case those full-time employees not covered by any such agreement shall be eligible for such benefit; or
- (iii) where such employer is not required by law to pay federal, state and city payroll taxes. In addition, 3 the department may waive the requirements of this section for an employer if such employer has demonstrated to the satisfaction of the department that the offering of such benefit would be a financial hardship for such employer.”

Required Benefit.

Every covered employer “shall offer full-time employees the opportunity to use pre-tax earnings to purchase qualified transportation fringe benefits, other than qualified parking, in accordance with federal law, provided that in the event that such employer’s number of full-time employees is reduced to less than twenty, any employee eligible to be provided such opportunity prior to the employee reduction shall continue to be provided such opportunity for the duration of such employee’s employment with such employer.”

PA - Philadelphia

Law:

[Philadelphia Code Sec. 9-6000](#)

Official Website:

N/A

Covered Employee. PA - Philadelphia

“Any person who performed an average of at least thirty (30) hours of work per week, for compensation, within the geographic boundaries of Philadelphia for the same employer within the previous twelve months.”

Covered Employer.

“An individual, co-partnership, association, corporation, or any other entity, who or that employs fifty (50) or more Covered Employees, for compensation; but excluding government employers.”

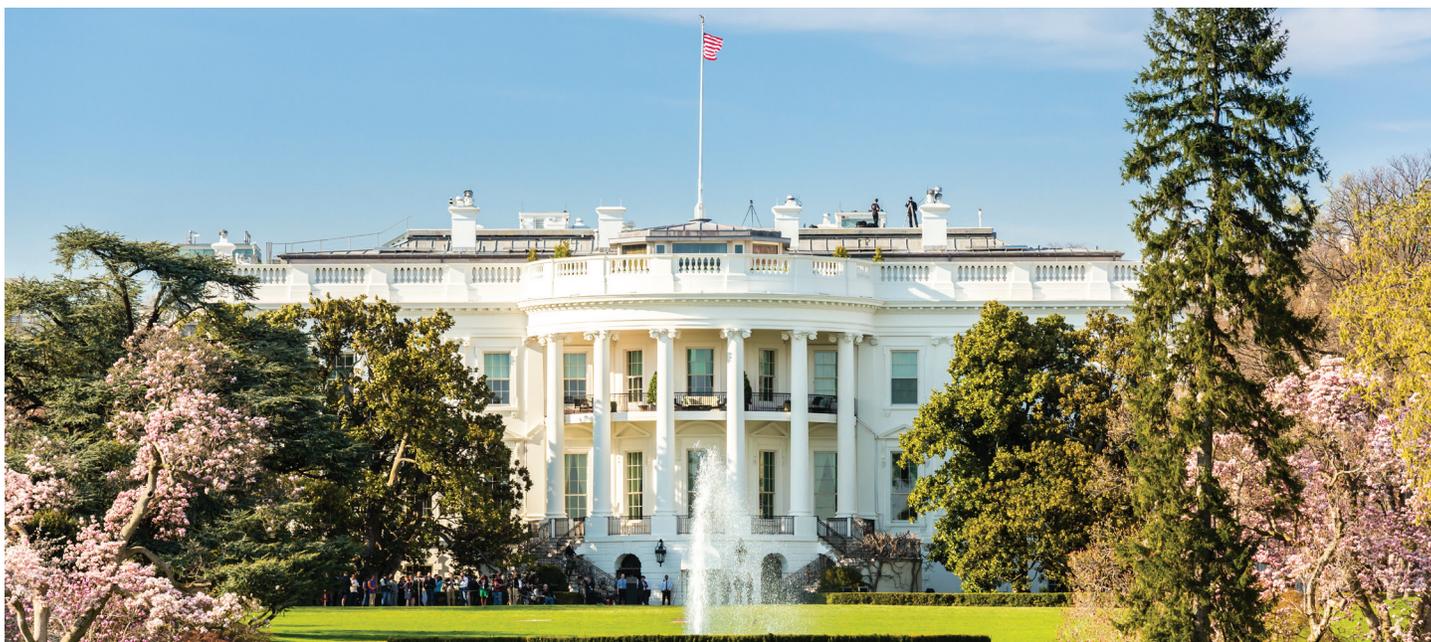
Required Benefit.

“Every Covered Employer shall make available to all of its Covered Employees at least one of the following employee commuter transit benefit programs:

Election of a pre-tax, payroll deduction for Mass Transit Expense or Qualified Bicycle Expenses, consistent with the Internal Revenue Code at benefit levels at least equal to the maximum amount that may be deducted for such programs pursuant to the Internal Revenue Code, as amended from time to time; or

An employer-paid benefit whereby the Covered Employer supplies a Fare Instrument for a Covered Employee’s Mass Transit Expense, at benefit levels at least equal to the maximum amount that may be deducted for such programs pursuant to §132(f)(2) of the Internal Revenue Code, as amended from time to time; or

Any combination of [the above programs]”



WA - Seattle

Law:

[Seattle Municipal Code Ch. 14.30](#)

Official Website:

<https://www.seattle.gov/laborstandards/ordinances/commuter-benefits>

Covered Employee.

“covered employees...are limited to those who work an average of ten hours or more per week in Seattle in the previous calendar month.”

Covered Employer.

“covered employers are limited to employers who employ 20 or more employees.

to determine the number of employees for the current calendar year, the calculation shall be based upon:

1. The average number per calendar week of employees who worked for compensation during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. For employers that did not have any employees during the previous calendar year, the number of employee(s) will be calculated based upon the average number per calendar week of employees who worked for compensation during the first 90 calendar days of the current year in which the employer engaged in business; and
2. All employees who worked for compensation shall be counted, including but not limited to:
 - a. Employees who are not [“covered employees”];
 - b. Employees who worked inside the City;
 - c. Employees who worked outside the City; and
 - d. Employees who worked in full-time employment, part-time employment, joint employment, temporary employment, or through the services of a temporary services or staffing agency or similar entity.

Governmental entities and tax-exempt organizations are exempted from [the commuter benefit requirement].”

Required Benefit

“all covered employers shall provide a pre-tax election commuter benefit to covered employees.

Covered employers shall make the offer of pre-tax election commuter benefits, to covered employees within 60 calendar days of commencing employment.

The pre-tax election commuter benefit shall allow employees to elect to exclude qualified transportation fringe benefits (except for parking) incurred for transit expenses or vanpool expenses from the employee’s taxable wages and compensation up to the maximum level allowed by federal tax law, consistent with federal Internal Revenue Code section 132(f) as of June 1, 2018.

Covered employers shall provide the payroll deduction within 30 calendar days of the covered employee selecting the benefit.

Fully or partially subsidized, employer-provided, transit passes qualify as pre-tax election commuter benefits for [purposes of this section].”



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