

# CLIENT ALERT

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## **Effective March 1, 2020, every NJ employer with more than 20 employees must offer “pre-tax transportation fringe benefits” to their employees.**

On March 1, 2019, New Jersey has become the first state to mandate that certain employers provide pretax transit benefits to their employees. While the Law became effective immediately with Governor’s signature of Senate Bill 1567, it is considered “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.

APPLICABLE EMPLOYERS are NJ businesses that employ more than 20 employees, not including those covered under a collective bargaining agreement (\*) and who are subject to state’s unemployment compensation laws. (\*) The effective date of the Law for collective bargaining units is tied to the dates of their agreements. Employers with 20 or more employees that have union employees must offer Pre-tax Transit Benefits to their union employees only once their collective bargaining agreements that were in effect on March 1, 2019, expire.

APPLICABLE BENEFITS - The government already allows employers to offer this fringe benefit, which was established in 1993 as part of the federal tax code section 132(f). Commuter benefits were meant to provide tax incentives to employees to encourage their use of mass transportation, with the goal of reducing traffic congestion and improving air quality. Under this program benefits include Mass Transit costs and Van Pool expenses as well as a Parking Benefit. Cabs and other ride share programs do not qualify under this program unless they are part of a program like UberPool or LyftLine. The 2020 levels are up to \$270/month for qualified parking and a separate benefit of \$270/month for van pools and mass transit expenses. Election may be made into one or both programs. This money is deducted from the employee’s pay on a pre-tax basis, so employees save on taxes and the employers save based on their FICA Match.

APPLICABLE NJ BENEFITS - The NJ Law specifically states that “Pre-tax transportation fringe benefit” means 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 of 1986 (26 U.S.C. s.132(f)(1)) 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 of 1986 (26 U.S.C. s.132(f)(2)). ([https://www.njleg.state.nj.us/2018/Bills/PL19/38\\_.PDF](https://www.njleg.state.nj.us/2018/Bills/PL19/38_.PDF)). (my underlining)

This wording is relevant because of the two very specific types of commuter expenses under federal tax code section 132(f). The wording in the NJ Law, is unclear as it appears to pertain only to Mass Transit costs and Van Pool and not the Parking expense. Our research is split down the middle with half of the interpretations of this law stating you do need to offer the parking benefit and half stating that you do not. You may want to obtain an opinion from your accountant regarding their interpretation of this law as it is a tax savings program as opposed to an employee benefit requirement.

THIS IS NOT PART OF A FLEXIBLE SPENDING PLAN, although it may appear that way to the employees as the money is deducted on a pre-tax basis. This program falls under IRS code, Section 132(f), Qualified Transportation Fringe Benefit. There are no eligibility requirements and no specific enrollment periods. Employees may opt in or drop out as they wish and may change their deductions over the course of the year. The employee may use only what is accrued in their account but may not use more in any month than the monthly maximum as defined each year by the IRS. If an excess occurs in one month, the employee should consider changing their elections for the following month(s).

AN EMPLOYEE'S MONEY IS FORFEITED for the transportation account at the time of employment termination or employee ineligibility. Reimbursements for the Parking Benefit may be made for up to 90 days beyond the termination date for only those parking expenses that were incurred prior to termination.

THE FINE FOR NON-COMPLIANCE will be between \$100 and \$250 for the first violation. An employer has 90 days from the date of the violation to offer the pre-tax transportation fringe benefit program before the fine is imposed. After 90 days, each additional 30-day period in which an employer fails to offer a pre-tax transportation fringe benefit is a subsequent violation subject to a \$250 penalty.

YOUR NEXT STEP IF YOU ARE AN APPLICABLE EMPLOYER is to offer this to your employees no later than March 1, 2020. You may self-administer the program or hire a third-party vendor to do it for you. A third-party vendor will have a monthly minimum to handle this plan. So if you have employees that can and do take advantage of this program, paying a vendor may be well worth it to take the administration hassle off of your HR department as employees may enter into the plan at any time, stop it at any time and change their elections at any time. We assume that most of our client's employees will not in a position to use these benefits based on locale and work sites, so self-administering the plan may be more cost effective.

***Disclaimer:***

***This notification is provided as a highlight sheet and is not meant to advise you of your entire obligations under this law/acts, nor to serve as legal advice. If you would like more complete information, please do not hesitate to contact our office, your accountant or your attorney.***