

# CLIENT ALERT

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IMPORTANT  
UPDATE

**Effective March 1, 2020, every NJ employer with more than 20 employees, including part time 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.

UPDATE:

- Employer and Employee are defined under this law as under the “Unemployment Compensation Law”
- All employees as defined above are eligible, not just full time.
- NJ Transit ([https://www.njtransit.com/var/var\\_servlet.srv?hdnPageAction=CommuterTaxTo](https://www.njtransit.com/var/var_servlet.srv?hdnPageAction=CommuterTaxTo)) includes parking as part of the applicable law. Attached for your convenience.

APPLICABLE EMPLOYERS are NJ businesses that employ more than 20 employees 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 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. There continues to be differing interpretations as to whether Parking must be included. Of note is the fact that the advertisement for this program on the njtransit.com website does include parking. If you do not want to include the parking benefit, you should first obtain an opinion from your accountant regarding their interpretation of this law as this is a tax savings program as opposed to an employee benefit requirement.

THIS IS NOT PART OF A FLEXIBLE SPENDING PLAN, 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 annually 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.

PUBLIC AWARENESS CAMPAIGNS are a requirement of the bill. The New Jersey Transit Corporation is tasked to establish a public awareness campaign in conjunction with the New Jersey Turnpike Authority and the South Jersey Transportation Authority. The campaign is to encourage the public to contact employers about pre-tax transportation fringe benefits.

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.

IF YOU HAVEN'T ALREADY, 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. If you have employees that can and do take advantage of this program, paying a vendor to ensure proper adjudication may be well worth it. If you want a vendor up and running by March 1, you should initiate the paperwork now.

Attached to this email is a sample announcement that you may make changes to to accommodate your company. We recommend requiring a signature by all employees either to participate or waive enrollment into the program. This announcement should also become part of your new hire and open enrollment paperwork. Please note that this is not an insurance product, but a benefit under tax code. We do not warrant that this email or your use of the sample document completes your obligation under this law. We recommend that you review this with your corporate accountant to ensure full compliance.

**Disclaimer:**

***This notification is provided as for informational purposes only 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.***