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LEGAL ALERT



## Legal Alert: Qualified Transportation Benefit Increases

2/23/2009

The American Recovery and Reinvestment Act of 2009 (the "Act"), which was signed by President Obama on February 17, 2009, made many significant changes to the Internal Revenue Code (the "Code"), but one change that has so far attracted relatively little notice is a temporary increase in the amount that can be provided to employees tax free in the form of transit passes and/or vanpooling benefits under Code Section 132(f). Beginning with the month of March, 2009, and continuing through December, 2010, the monthly limit for transit passes and vanpooling benefits (combined) is equal to the monthly limit that applies to qualified parking expenses. This means that, for the remainder of 2009, that monthly limit is \$230; before March 1, the monthly combined limit for transit passes and vanpooling benefits was \$120. These limits (both the parking limit and the transit pass/vanpooling limit) continue to be subject to annual cost-of-living adjustments. Though we do not know what the limits will be for 2010, we do know that the 2010 combined limit for transit passes and vanpooling benefits will remain equal to the 2010 limit for qualified parking benefits. **If you provide transit pass and/or vanpooling benefits, and your plan does not automatically apply increases in the limits, or only applies increases effective as of each January 1, providing increased benefits will require that you amend your plan.** In addition, even though qualified transportation fringe benefits cannot be offered through a cafeteria plan under Section 125 of the Code, they can be offered in exchange for employees' pre-tax salary reductions under Section 132(f)(4) of the Code. However, since those salary reduction elections must be for either a fixed dollar amount or a fixed percentage of compensation, increases cannot be automatically incorporated, and new employee elections must be made. There is no prohibition on making changes, such as there could be under a cafeteria plan, but changes may only be made prospectively, and this could prevent application of the increased limit as early as March 1, which is less than two weeks after the date of enactment of the Act.

If you have any questions regarding the Act, or concerning qualified transportation fringe benefits, please contact the Ford & Harrison attorney with whom you usually work or any member of Ford & Harrison's Employee Benefits practice group.