

New Year, New Required Transit Perk for NYC Employees

New York City's Affordable Transit Act (**Local Law 53**) (the "Act") will take effect on January 1, 2016. The Act requires employers in New York City with 20 or more full-time employees to provide pre-tax transit benefits to their full-time employees.

Background

Federal law allows, but does not require, employers to offer employees the opportunity to apply pre-tax income toward the purchase of qualified transportation fringe benefits (such as MetroCards and commuter train tickets). The current monthly limit is \$130 for the cost of transportation between home and work. When the Act becomes effective on January 1, 2016, covered New York City employers will be **required** to offer an employer program to allow full-time employees to apply pre-tax income toward the purchase of qualified transportation fringe benefits up to the limits established by federal law. Parking expenses are not covered by the Act. The Act will be enforced by the New York City Department of Consumer Affairs (the "DCA").

Covered Employers and Employees

The Act applies generally to employers with 20 or more full-time non-union employees working in New York City. Employers whose employees are covered by a collective bargaining agreement (a "CBA") are exempt from the Act, unless they have 20 or more full-time employees who are not covered by a CBA, in which instance the employer will be required to offer the benefit to such employees not covered by a CBA. The Act also applies to temporary help firms (*i.e.*, firms that recruit, hire and supply employees to perform services for another organization).

For purposes of the Act, a "full-time" employee is any employee who works an average of 30 hours or more per week, any portion of which is in New York City, for a single employer. Once an employee becomes eligible for the benefit, he or she will remain eligible during his or her employment with the employer, even if the employer later reduces its workforce to fewer than 20 full-time employees. Covered employers are not required to offer the benefit to part-time, temporary or seasonal employees or to independent contractors.

Employers who already provide employees with transit passes at the employer's expense will not need to provide the requisite benefit under the Act. However, if the value of an employer-provided transit pass is less than the maximum dollar amount allowed under federal law for pre-tax purchases of qualified transportation fringe benefits, then the employer must offer employees the opportunity to make up the difference through a pre-tax payroll deduction. Employers who provide employees with transit passes at the employer's expense must also comply with the Act's recordkeeping requirements (described below).

Covered Transportation Expenses

Transportation expenses covered by the Act include New York City regional mass transit services (*e.g.*, Metropolitan Transportation Authority subway and bus, Long Island Rail Road, New Jersey Transit and Metro-North), eligible ferry and water taxi services, van pool services and commuter bus services, and Access-A-Ride. Parking expenses and bicycling expenses (including CitiBikes) are not covered.

Employer Recordkeeping

Employers covered by the Act are required to keep records that demonstrate that each eligible full-time employee was offered the opportunity to apply pre-tax income toward the purchase of transit benefits and whether the employee accepted or declined the offer. Such records must be kept for two years, and employers may use the **model form** available on the DCA website to document compliance.

Penalty for Noncompliance

Employers have a six-month grace period after the Act takes effect on January 1, 2016 to become fully compliant. After July 1, 2016, any employer found to be in violation of the Act will be liable for a civil penalty between \$100 and \$250 for the first violation, and the employer will have a 90-day window to cure such first violation before a penalty is imposed. After the expiration of the cure period, every 30-day period in which the employer fails to offer the requisite benefit will constitute a subsequent violation and a civil penalty of \$250 will be imposed for each such subsequent violation.

Further Information

To help employers comply with the Act, the DCA has published a list of **FAQs** to address the various questions employers may have about the Act. In the FAQs, the DCA clarified that employers may, but are not required to, use third-party providers to administer their commuter benefits programs, and provided a list of third-party providers that can help employers set up and manage their commuter benefits programs.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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