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December 2015

NYC'S MASS TRANSIT BENEFITS LAW EFFECTIVE JANUARY 1, 2016

Effective January 1, 2016, the Mass Transit Benefits Law (the "law") will require for-profit and nonprofit employers with 20 or more full-time non-union employees in New York City to offer full-time employees the opportunity to use pre-tax income – up to $130 a month under federal law – to purchase qualified transportation fringe benefits. Smaller employees are encouraged to offer this benefit although not required to do so. The law provides a grace period until July 1, 2016 before the Department of Consumer Affairs is authorized to seek penalties.

More information on the Mass Transit Benefits Law can be found on the Department of Consumer Affairs' website: http://www1.nyc.gov/site/dca/about/pre-tax-transit-benefits-law.page.

Transit Covered by the Mass Transit Benefits Law

Covered employers must offer their full-time employees the opportunity to use pre-tax income to pay for their transportation by public or privately-owned mass transit or commuter vans with a seating capacity of six or more passengers. Covered transit includes, but is not limited to: regular-fare and reduced-fare MetroCards for the MTA NYC transit system, public and private buses, rail, paratransit, ferry and vanpool (including "dollar vans" in some circumstances). Employers must permit all eligible modes of transportation.

Qualified Bicycle Commuting Reimbursement: Under federal tax law, employees cannot use pre-tax income for qualified bicycle commuting reimbursement benefit, and thus such reimbursement is not covered by the Mass Transit Benefits Law. However, qualified bicycle commuting reimbursement may be provided tax-free as an employer-paid fringe benefit.

CitiBike: Under federal tax law, bicycle rental fees are not qualified transportation fringe benefits, and thus CitiBike fees are not covered by the Mass Transit Benefits Law.

Qualified Parking Expenses: Qualified parking expenses are not covered by the Mass Transit Benefits Law. However, employees may use pre-tax income to pay for qualified parking expenses under federal tax law.

Employers Covered by the Mass Transit Benefits Law

Generally, employers with 20 or more full-time employees working in New York City are covered by the law. The following employers are exempt:

- Employers whose employees are covered by a collective bargaining agreement (except if the employer has 20 or more full-time employees who are not covered by the collective bargaining agreement; in this case, the employer must offer such employees commuter benefits);

- United States, New York State, and New York City governments, including any office, department, independent agency, authority, institution, association, society or other body of the state;

- Employers not required to pay federal, state, and New York City payroll taxes.

Determining the Number of Full-Time Employees: The law applies to employers with 20 or more full-time employees working in New York City. Thus, an employer with fewer than 20 full-time employees working in New York City but more than 20 full-time employees working outside of New York City does not have to offer commuter benefits. However, full-time employees whose job responsibilities require them to work occasionally in New York City would be considered "working in New York City," as are employees who commute into New York City but live outside the City. Independent contractors are not employees and so are not included in determining the number of full-time employees.

Reduction in Workforce: If an employer's workforce is reduced to fewer than 20 full-time employees, the employer must allow the full-time employees who had been eligible to purchase commuter benefits before the workforce reduction to continue to purchase these benefits for the duration of their employment.

Employees Covered by the Mass Transit Benefits Law

Full-time employees of covered employers are eligible to purchase commuter benefits. A full-time employee is any employee who works an average of 30 hours or more per week, any portion of which was in New York City, for a single employer. Employers should calculate the average hours worked in the most recent four weeks. Independent contractors are not employees and are thus not covered by the law.

The law requires covered employers to permit eligible employees to purchase commuter benefits by January 1, 2016 or four weeks after an employee begins full-time work, whichever is later.

Setting up a Commuter Benefits Program

Covered employers may, but are not required to, use third-party providers to manage their commuter benefits programs, including:

- Benefit Resource, Inc. (www.benefitresource.com)
- Commuter Benefit Solutions (www.commuterbenefits.com)
- Qualified Transportation Benefits (www.qtbservices.com)
- TotalBen, LLC (www.totalben.com/commuter)
- WageWorks (www.wageworks.com)

Third-party vendors may charge fees for administering commuter benefit programs. Under New York State Labor Law, employers may not deduct such fees from employees' wages.

Pre-Tax Deduction Limit
Currently, an employee can deduct up to $130 a month under federal law for transit expenses; there is no minimum amount. However, an employee's total transportation costs may exceed $130 each month, and many third-party providers offer programs where an employee may put post-tax deductions into the account if the employee's monthly transit expenses exceed the monthly pre-tax limit.

Employer Documentation and Recordkeeping
Employers must give eligible employees a written offer of the opportunity to use pre-tax income to purchase qualified transportation fringe benefits and maintain a record of the offer and the employees' responses. Employers may use the form available on the Department of Consumer Affairs website to document compliance: http://www1.nyc.gov/assets/dca/downloads/pdf/about/CommuterBenefits-EmployerComplianceForm.pdf. The Commuter Benefits Law requires employers to keep records for two years, but employers should consult a tax professional to determine any other recordkeeping requirements under state and federal law.

Enforcement
After July 1, 2016, the Department of Consumer Affairs is authorized to seek penalties for failure to comply with the law. Employers will have an opportunity to cure noncompliance within 90 days of the violation. Employees can report noncompliance to the Department of Consumer Affairs.

Employers can be fined $100 to $250 for the first violation of the law if they do not cure the violation within 90 days. If the violation is not cured after the first fine is imposed, an additional fine of $250 may be issued after every additional 30-day period of noncompliance.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.