

OUR INSIGHTS

D.C. Commuter Benefits Are Almost Here: Employers Must Comply by January 1

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Employers with 20 or more employees working in the District of Columbia have fewer than 90 days to comply with a new law that requires them to offer commuter benefits to employees by January 1, 2016. Washington, D.C. is one of several cities and regions that have recently passed mandatory commuter benefit ordinances requiring businesses with a certain number of employees to offer commuter benefits to employees. The ordinances aim to encourage employees to use public transportation rather than drive alone to work.

City Transit Ordinances

San Francisco has had a transit benefit ordinance in place since 2009. In 2014, employers with 50 or more full-time employees in nine San Francisco Bay Area counties were required to offer a transit benefit program for their employees. Similarly, a new New York City ordinance will require employers throughout the five boroughs with 20 or more full-time employees to offer commuter benefits to their employees. The New York City and Washington, D.C., ordinances both go into effect on January 1, 2016. It may not be long before other metropolitan areas follow suit.

January 1 Compliance Deadline

Employers with 20 or more employees working in the District of Columbia have fewer than 90 days left to comply with the new law requiring them to offer commuter benefits to employees by January 1, 2016. All employees, both full-time and part-time, count for purposes of determining whether an employer must comply with the D.C. ordinance. The ordinance covers all employers—public, private, and nonprofit—with the minimum number of employees. The mayor has the authority to expand the definition of “covered” employers to include employers with fewer than 20 employees starting January 1, 2017.

The D.C. ordinance (the Sustainable D.C. Omnibus Amendment Act of 2014, 20-142) was signed by then-mayor Vincent C. Gray in July of 2014 and became effective after congressional review on December 17, 2014. The District of Columbia’s Department of Employment Services is believed to be drafting proposed regulations, which will be subject to public comment before they become final. Those final rules may address how the District of Columbia will monitor compliance (e.g., mandatory self-reporting, random compliance audits, and audits initiated by employee complaints) and penalties for noncompliance. Even without the final regulations, covered employers that currently do not offer commuter benefits can move forward and should consider which

options are most appropriate for them.

Compliance Options

Employers can offer the commuter benefits program in one of three ways:

1. An employee-paid pretax benefit program that is consistent with section 132(f) of the U.S. Internal Revenue Code, which governs the taxability of transportation-related fringe benefits. This option allows employees to exclude their transit or vanpool costs from their taxable income up to the maximum amount allowed as a qualified transportation fringe benefit under section 132(f), which is currently set at \$130 per month for 2015 and 2016;
2. An employer-paid benefit program under which the employer supplies a transit pass or reimburses vanpool or bicycling costs; or
3. Employer-provided transportation at no cost to employees either in a vanpool or bus operated by or for the employer.

A covered employer that fails to offer at least one of the commuter benefit program options will be subject to fines and penalties.

Next Steps for Employers Operating in D.C.

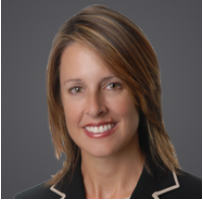
Employers that currently offer a qualified transportation benefits program (that is, pretax transit benefits) are already compliant. The first compliance option listed above of an employee-paid pretax benefit program typically is the easiest and least costly option for employers to implement. Under that option, both employees and employers save on payroll taxes and the primary cost to the employer is administration. Even without final regulations, covered employers that currently do not offer commuter benefits can comply by offering employees a qualified transportation benefits program.

Employers operating in D.C. should consider taking the following steps to comply with the mandatory commuter benefits ordinance:

- Determine whether your organization is subject to the D.C. ordinance.
- Determine whether your organization offers a compliant commuter benefit program.
- If your organization does not offer compliant commuter benefit options, evaluate the permissible commuter benefit options and select one or more options to offer to employees.
- Keep records to document the implementation of the program.
- Monitor the Department of Employment Services' regulatory projects for proposed regulations for additional guidance.

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Ms. Nielsen is a member of the employee benefits and executive compensation group. She has worked extensively in the areas of executive compensation arrangements, equity compensation and benefits provided to employees and independent contractors outside of qualified retirement plans. She has experience with all issues relating to executive compensation arrangements, including Code § 409A, performance-based compensation and Code § 162(m), equity compensation, change in control...
