
New Jersey Requires Pre-Tax Transportation Fringe Benefits

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The federal Tax Cuts and Jobs Act of 2017 eliminated a federal tax deduction for employers which had allowed them to deduct the cost of providing qualified transportation benefits to employees (thereby removing the tax incentive for employers to do so). Now, in response, New Jersey enacted "An Act Concerning Pre-Tax Transportation Fringe Benefits." This Act requires all New Jersey employers with 20 or more employees to offer employees the opportunity to set aside wages on a pre-tax basis for the purchase of qualifying transportation services, such as transit passes and commuter highway vehicle travel. Employees subject to a collective bargaining agreement are excluded. The Act requires the benefit elections be permitted "at the maximum benefit levels" under federal law which, for 2019, are \$265 per month. The benefit is funded by employees, but employers must shoulder the burden of administering it through payroll deductions.

A violation of the Act is punishable by a civil penalty of between \$100 and \$250 for a first violation, although an employer will have 90 days to become compliant before the civil penalty is imposed. Thereafter, each additional 30-day period where the employer is not in compliance is considered a subsequent violation for which a \$250 civil penalty will be imposed. While the Act goes into effect immediately, it will remain inoperative until March 1, 2020, or the effective date of rules and regulations to be adopted by the Commissioner of Labor and Workforce Development, whichever occurs first.

What does this mean for employers?

Employers with less than 20 employees are not required to do anything. Employers with 20 or more employees should adopt a policy whereby employees can elect to set aside, on a pre-tax basis, up to \$265 per month (for 2019 and, for subsequent years, as determined by federal law) for qualifying transportation costs. Employers subject to the Act should do so as soon as possible (as rules and regulations could be released and go into effect any day), but, at the latest, by March 1, 2020. Failure to do so could result in civil penalties.

Next steps for employers?

Given this information, New Jersey employers should review and supplement their employee handbooks and policies to ensure they become compliant with the Act as soon as possible. Thorough and precise documentation of the adoption and implementation of policies in accordance with the Act will be critical for employers to demonstrate compliance.

If you have any questions about this legal alert, please feel free to contact Adam Gersh, Jeremy Cole or any other member of Flaster Greenberg's Labor & Employment Department.