



Transportation plans offer valued benefits but pose compliance issues

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In this article

[Common features of qualified transportation plans](#) | [Monthly limits](#) | [Taxation](#) | [Special rules](#) | [Documentation, reporting and disclosure](#) | [Penalties](#) | [State and local laws](#) | [Related resources](#)

Since [1998](#), employees have been able to pay for qualified transportation fringes through pretax salary reductions under Internal Revenue Code (IRC) [§ 132\(f\)](#), and these benefits have become quite popular. (Employers could provide this benefit on a tax-advantaged basis as early as [1992](#).) The tax exemption extends to commuting expenses for transit passes, qualified parking, van pools, and in certain years, bicycles. While these benefits are not subject to cafeteria plan or ERISA rules, compliance difficulties exist, and a 2018 tax law added complexities. Some state and local jurisdictions have imposed employer mandates — including one that started in Philadelphia on Dec. 31, 2022 — leveraging the tax advantage of commuter benefits; others provide tax-related incentives. This GRIST summarizes major issues concerning qualified transportation plans under federal, state and certain local laws.

Common features of qualified transportation plans

[Regulations](#) related to qualified transportation fringe benefits have remained largely unchanged since finalized in 2001. Unused amounts under a pretax salary-reduction arrangement may carry over to the next coverage period, with no limits on amount or duration. Qualified transportation benefits must be for transportation between an employee's residence and place of employment; these benefits cannot be cashed out or used for other pretax benefits.

Over the years, employers have taken different approaches to transportation benefits, often reflecting local commuting practices. For example, an employer with ready access to parking facilities might choose to emphasize parking benefits, especially in areas without mass transit. On the other hand, an urban employer may want to focus on transit passes because mass transit is the most common method of commuting.

Other employers offer transit passes to further corporate climate goals. Mercer's [2022 US Compensation Policies & Practices Survey](#) shows that some employers are utilizing commuter benefits as part of a greener transportation program. Among the more than 80 survey respondents, almost one in five companies promote the use of public transportation by offering subsidies or allowances, and another 5% plan to do so in the next two years. Another 13% of employers actively promote commuting by means other than a personal vehicle, such as a van pool.

Three types of programs dominate the commuter benefit landscape:

- **Employee pretax program.** By far, this is the most common design. Employees pay for benefits on a pretax basis through payroll deduction. Elections must be made before the start of the coverage period (which is typically one month), giving employees the flexibility to change or revoke elections up to 12 times per year. As already noted, these elections are not subject to restrictive cafeteria plan rules. Contributions are subject to monthly limits that are annually indexed for inflation (see the [Monthly limits](#) section). Employers may provide benefits directly or through a “bona fide reimbursement arrangement,” discussed further in the [Special rules](#) section.
- **Employer-funded program.** Employers pay 100% of benefits, subject to the same monthly limits on a nontaxable basis. This approach is most common in densely populated suburban areas where employee recruitment and retention are critical. Just like employee pretax programs, employer-funded programs may provide benefits directly or through a bona fide reimbursement arrangement. Employers should beware of vendors offering a program that creates an illegal tax advantage through “double-dipping.” Such a program is not a bona fide reimbursement program (see the [Taxation](#) section).
- **Combination program.** This approach blends the employee pretax and employer-funded programs. The combined contributions are subject to the monthly limits.

[IRS guidance](#) allows employees to use carryover balances for another type of qualified transportation benefit, up to the monthly limit, but unused balances cannot be refunded.

Example. Ann (who is paid semimonthly) has used a transit pass for commuting at a cost of \$250 per month. She decides to start driving to work in her personal vehicle and use public parking facilities that cost \$200 per month. Ann has a \$125 unused balance for commuting benefits when she cancels the order for her next month's transit pass. Ann cannot simply request a \$125 refund, but she can make a prospective election change to deduct \$75 for the next month and apply the \$125 unused balance toward her monthly parking costs. In later months, Ann can change her monthly election to match the \$200 parking cost.

Other [IRS guidance](#) confirms that the employee definition in IRC § 132(f) excludes partners, 2% or greater shareholders, and independent contractors. However, similar benefits provided to those individuals may be eligible for tax relief under the § 132 working condition or *de minimis* fringe exclusions. See [IRS Publication 15-B](#) for more information on all fringe benefits.

Certain state laws, such as wage withholding, escheat and unclaimed property laws, have always affected qualified transportation fringe benefits. Over the years, some states have adopted laws building on the federal qualified transportation fringe benefit. Today, a few jurisdictions require employers to provide a nontaxable commuter benefit program, while others provide tax-related incentives for these programs. These state and local mandates and incentives are discussed further in the [State and local laws](#) section.

Monthly limits

Parking, transit passes and commuter highway vehicles (van pools) are subject to monthly reimbursement limits, set by statute but adjusted annually by IRS based on the average chained Consumer Price Index for All Urban Consumers (chained CPI-U) for the 12 months ending Aug. 31 of the prior year. Reimbursements of bicycle-commuting expenses (for the purchase of a bicycle and bicycle improvements, repair, and storage) are \$20 per month (up to a \$240 annual limit) and do not change from year to year.

[Rev. Proc. 2022-38](#) provides the 2023 reimbursement limits for parking, transit passes and commuter highway vehicles. Monthly limits for these benefits are \$300 in 2023, up from \$280 in 2022. The monthly limit for transit passes and vanpooling is combined; in other words, the 2023 monthly limit for transit passes and van pools is a total of \$300, not \$600.

For transit passes, [IRS guidance](#) verifies that monthly limits are cumulative if an employer distributes transit passes in advance (for any period up to 12 months).

Example. Excellent Electronics distributes quarterly transit passes to its employees for April, May and June at the beginning of April 2023. The passes are tax-free if they do not exceed \$900 (three times the monthly limit).

Taxation

Federal law

Commuter benefits historically have been available to employees, free of employer and employee withholding for federal income, unemployment, Social Security and Medicare taxes. Since 1998, employee contributions have been available on a pretax basis, with employer tax deductions usually equal to the combined employer and employee contributions. However, the [Tax Cuts and Jobs Act](#) (TCJA) (Pub. L. No. 115-97) made two major changes for the 2018–2025 tax years only:

- **No employer tax deduction.** Employer and employee contributions are no longer eligible for a tax deduction for all qualified transportation benefits, except bicycle-commuting expenses. However, [regulations](#) allow an employer tax deduction in three limited circumstances, and subsequent [IRS guidance](#) provided transitional relief for tax-exempt organizations. Separate [IRS guidance](#) provides detailed rules for determining the amount of nondeductible parking expenses. Here are the three

limited circumstances allowing an employer tax deduction (employers should consult tax counsel before using one of these exceptions):

- Employee contributions that are post-tax because they exceed the monthly limits
 - Expenses for vanpooling, transit passes or parking that are also available to the general public
 - Vanpooling, transit passes or parking that are sold to customers “in a bona fide transaction for an adequate and full consideration” but are not part of a compensation-reduction agreement commonly used for transportation plans
- **No tax-free reimbursement of bicycle-commuting expenses.** The TCJA eliminated tax-free reimbursement of these expenses. If bicycle-commuting expenses are part of a transportation plan, reimbursements must occur on a taxable basis.

No double-dipping. In the past, a few vendors promoted a double-dipping scheme for parking benefits that IRS later prohibited in an [information letter](#) and a [revenue ruling](#). Beware of approaches that resemble this design:

- An employer provides its employees a parking benefit on the workplace premises or at nearby facility.
- Employees contribute to the cost of the benefit on a pretax basis.
- The employer provides employees a monthly, nontaxable reimbursement, bringing up take-home pay to the same level as if employees never contributed to the cost of the benefit.

In this scenario, IRS concluded that the reimbursement is taxable, stating, “The exclusion from gross income under § 132(a)(5) does not apply to the payments characterized by the employer as ‘reimbursements.’”

State law

Most states’ tax codes mirror the federal code; however, California does not. Before 2022, Massachusetts did not conform to the federal tax code, but a 2022 law now conforms state taxation of commuter benefits to the federal tax treatment. An employer that charges employees to use its own parking facility may be subject to state sales taxes; for example, Minnesota has such a law. See the [State and local laws](#) section for more details on state and local tax treatment of commuter benefits.

Special rules

Cash reimbursement

Qualified transportation fringe benefits can provide cash reimbursement of expenses incurred or paid for van pools, qualified parking and sometimes transit passes (as discussed further below), as long as the reimbursement is made under a “bona fide reimbursement arrangement.” Expenses must be incurred

before reimbursement occurs; cash advances are not allowed. Employees must substantiate expenses within a reasonable time (the rules provide a 180-day safe harbor). Substantiation must show the expense was for only the employee and for the sole purpose of commuting to and from the employer's work location. Employee certification and a third-party receipt are generally required, unless a receipt is not provided in the ordinary course of business.

Substantiation is waived for parking provided in kind and for transit passes that are fare media or can be used to buy fare media and are distributed to employees without any cash reimbursement. IRS refers to these electronic payment cards as "vouchers." Vouchers can be smartcards or debit cards restricted by a merchant category code (MCC) if they meet certain requirements. If a fare media merchant sells other merchandise or services unrelated to commuter benefits, this benefit may lose its qualified status under [IRS guidance](#).

Transit passes and the 'readily available' test

For transit passes, cash reimbursement is permissible only if an employer can show these vouchers are not readily available for direct distribution by the employer to employees. Otherwise, an employer must provide transit passes directly to employees. Stated another way, when vouchers are readily available, an employer can't reimburse employees' expenses paid for transit passes and can only provide the passes directly to employees. This is common in most metropolitan areas. As a result, employers often use a third-party administrator (TPA) to provide transit passes directly to employees.

In a nutshell, the readily available test is a three-step process, applied in each separate metropolitan area, not nationally (for example, applied separately in Chicago, New York and Washington, DC):

1. **Voucher program exists.** Confirm whether a voucher or similar program exists in an area. If not, cash reimbursement is acceptable because vouchers are not readily available. If yes, go to the next step.
2. **Voucher program costs.** Calculate the average annual cost of vouchers paid by employers to voucher providers (excluding delivery charges of \$15 or less per delivery). Also calculate the average annual value of the vouchers. If an employee may use more than one transit system (e.g., a ferry and a train), then the employer may average the cost of the vouchers used by each system. If the average cost exceeds 1% of the average value, cash reimbursement is acceptable because vouchers are not readily available. Otherwise, go to the next step.

Example. Voucher company Capital Transportation Inc. provides mass transit vouchers to employers in the area for distribution to employees, many of whom use a train and the subway to commute to work. Employers may purchase vouchers monthly in reasonably appropriate quantities. Several transportation operators in the area accept vouchers either as fare media or in exchange for fare media. To cover operating expenses, Capital Transportation charges \$0.50 per voucher, plus a reasonable and customary \$15 charge for delivery of each voucher order by an employer. One employer (Watergate Plumbing LLC) gives these vouchers to employees and reasonably expects that \$250 is the average value of different transportation systems' vouchers that the employer will purchase from Capital Transportation for the next calendar tax year.

Here, vouchers for the area are readily available for direct distribution to employees because the expected cost of the vouchers is 1% or less of their value (\$0.50 divided by \$250 equals 0.2%). The delivery charges are disregarded because they are reasonable and customary, and no other restrictions (see condition 3 below) would cause the vouchers not to be readily available. Thus, if this employer program reimbursed employees for the cost of the vouchers, the reimbursement would NOT be a qualified transportation fringe because vouchers are readily available. As a result, Watergate Plumbing must provide the vouchers directly to employees.

- 3. Voucher program restrictions.** Assess whether unreasonable requirements restrict the advance purchase, quantity or appropriate denominations of vouchers. If yes, cash reimbursement is acceptable because vouchers are not readily available. If no, cash reimbursement is impermissible because vouchers are readily available, and an employer must provide vouchers directly to employees.

Example. Voucher company Cool Commuters Inc. distributes vouchers that can be used for several of six different mass transit systems in a metropolitan area. A \$250 voucher will cover one month of transit expenses. Cool Commuters charges \$15 per month for delivery and an additional charge of \$0.50 per voucher. No other restrictions apply. The \$15 delivery charge does not count so cost is solely based on \$0.50 per voucher, which is less than 1% (\$0.50 divided by \$250 is 0.2%). These vouchers are readily available. Employers in that area must purchase and distribute vouchers (either on their own or through a TPA) to employees rather than provide cash reimbursement to employees who purchase transit passes themselves.

Earlier relief for cash reimbursements of transit passes expired on Dec. 31, 2015, in accordance with this [IRS information letter](#). [IRS guidance](#) confirms that even when a transit pass malfunctions, cash reimbursement is prohibited if vouchers are readily available. In this situation, employees must work with the voucher provider to obtain an appropriate remedy.

One employer workaround has been to use vendor-provided smartcards and terminal- or MCC-restricted debit cards. IRS guidance (most recently, [Rev. Ruling 2014-32](#)) considers these cards to be vouchers as long as certain requirements are met. Employers may use a vendor to distribute these cards and avoid the need for direct distribution to employees. This allows employers to simply load the card every month with the elected contribution (up to the federal limits), without any further involvement. The same rationale presumably would apply to cards available digitally (e.g., through Apple Wallet).

Parking

Qualified parking comes in two forms:

- At or near the employer's business premises
- At or near a location from which employees commute to work (like a paid parking facility at a ferry terminal)

The nearness of the parking location is based on facts and circumstances. Parking at or near the employee's residence does not qualify. Parking expenses at a temporary work location do not qualify, per an [IRS chief counsel memorandum](#). In a [private letter ruling](#), IRS concluded that a leased parking lot adjoining the workplace qualifies. In an [information letter](#), IRS pointed out that parking is permitted for single-occupancy vehicles.

When a parking expense is for a vehicle used in a car pool or van pool, the monthly limit applies only to the employee assigned the parking space. In other words, passengers may not combine their monthly parking limits for a higher reimbursement. Unlike transit passes, cash reimbursement is always acceptable for parking expenses.

Keep in mind that qualified parking does not include parking on or near an employee's residence. No "work from home" exception exists. IRS guidance does not define "near," so that determination depends on facts and circumstances.

If the fair market value of the parking benefit exceeds the monthly limit, then the excess amount is reportable as taxable income.

Commuter highway vehicles (van pools)

Regulations define a commuter highway vehicle as one seating at least six adult passengers (excluding the driver) and satisfying the "80/50 rule":

- At least 80% of the mileage in a year is reasonably expected to be for commuting.
- The number of employees transported is at least 50% of the adult seating capacity (excluding the driver).

As a result, a typical family vehicle will not qualify as a commuter highway vehicle.

Employers usually take one of four approaches to van-pooling benefits:

- **Employer-managed.** An employer operates a van pool by buying or leasing the vehicles or engages a TPA to provide and maintain the vehicles.
- **Employee-managed.** Employees maintain the vehicles and provide sufficient records to the employer, which reimburses employees' van-pooling expenses up to the monthly limit.
- **Transit authority-managed.** An employer engages a public or private transit entity to use its vehicles. If the transit authority-operated van pool accepts vouchers (for example, in Washington, DC), then the readily available test described in the [Transit passes and the 'readily available' test](#) section applies.
- **Exclude van-pooling benefits.** Due to this benefit's complexity and the vehicle size requirement, some employers simply exclude van pools from the transportation plan.

This [IRS information letter](#) contains a good summary of the first three options above.

The van-pooling and parking benefits may be used together, subject to these limitations:

- Only one employee (called the “prime member”) may receive the parking benefit, subject to a single monthly limit. In other words, the monthly parking limits of other ride sharers cannot be combined.
- The monthly van-pooling and parking limits must be separate. In other words, the prime member cannot increase the monthly parking limit if van-pooling costs are less than the monthly van-pooling limit, and vice versa.
- Any amount reimbursed above the monthly parking limit is reportable as taxable income.

Bicycle-commuting reimbursement

Unlike benefits for transit passes, parking and van pools, bicycle benefits may not be employee-funded. Instead, employers simply reimburse expenses for the purchase, improvement, repair or storage of a bicycle regularly used for commuting. The statute does not elaborate on what constitutes regular use, and IRS has not issued guidance.

Expenses incurred in one calendar year are reimbursable through March 31 of the next calendar year. The limit applies on an annual calendar-year basis, calculated by multiplying \$20 by an employee’s qualified bicycle-commuting months in a calendar year (up to \$240). A qualified bicycle-commuting month is one in which an employee used the bicycle for a “substantial portion” of commuting and did not receive any other qualified transportation benefit (like parking). Neither the statute nor any guidance clarifies what constitutes a substantial portion.

At least two other questions remain unanswered:

- How does an employer track qualified bicycle-commuting months so reimbursements do not exceed the statutory limit?
- What level of substantiation is required?

As mentioned in the [Taxation](#) section, another employer challenge is setting up the payroll system so these reimbursements are reported as taxable income through the 2025 tax year. As allowed for van-pooling costs, an employer may decide to exclude bicycle-commuting reimbursements from the transportation plan.

Loss of eligibility, including employment termination

As a reminder, carryovers may occur from month to month, and most plans typically allow monthly election changes so employees can manage any existing balance. However, employees who lose eligibility (most often because of employment termination) face the prospect of forfeiting their balances. [IRS guidance](#) confirms that refunds are prohibited. In addition, employees may not purchase commuter benefits for future months (even if the benefits are for employment-related purposes with another employer). Employees may not transfer balances to another qualified benefit like a health flexible spending arrangement (FSA), health reimbursement arrangement or health savings account.

If employees receive transit passes in advance of a month in which they are no longer eligible, the value is reportable as taxable income and subject to federal unemployment, Social Security and Medicare tax withholding. An exception waives these taxes if transit passes covered more than three months and the employment termination was unscheduled.

What happens to these unused balances? Here are some permissible options:

- Funds are forfeited to the employer's general assets.
- An employer may use funds to pay transportation plan expenses.
- An employer may fund the transportation plan accounts of all other participants on a fair and uniform basis.
- Funds can be restored if an employee regains eligibility (for example, as a rehire).

IRS guidance confirms that no special COVID-19 relief applies to transportation fringe benefits.

Therefore, employees who stopped commuting during the outbreak were not and are not eligible for a refund or able to transfer funds to a health FSA or similar tax-advantaged account.

Documentation, reporting and disclosure

ERISA and cafeteria plan rules do not apply to transportation plans, and the statute does not require a plan document or communications similar to a summary plan description or a summary of benefits and coverage. However, employers must make several plan design decisions and will want to communicate the rules to eligible employees. At a minimum, this document might address:

- Eligibility
- Available benefits
- Elections
- Administration and benefit delivery
- Substantiation and reimbursement
- Carryovers and unused balances

As a result, most employers provide a written overview of the transportation plan to increase participation and decrease confusion. IRS guidance confirms that employers may establish their own internal guidelines or requirements as long as they are consistent with existing law, regulations and other rules.

Box 14 of Form W-2 is a miscellaneous "Other" field. The instructions permit — but do not require — employers to use this field to report the total value of fringe benefits, including qualified transportation benefits. However, bicycle-commuting reimbursements are reportable as income on Form W-2 through the 2025 tax year.

Penalties

While the statute and regulations contain no specific penalties, violations jeopardize the qualified status of the transportation plan, putting all participants at risk of having tax-free benefits recharacterized by IRS as taxable income. In addition, noncompliance could result in W-2 failures and the prospect of issuing corrected W-2s and facing additional penalties. Violations could surface during an IRS audit or after a participant complaint. Using reasonable, good-faith efforts to correct known failures is the optimal approach.

State and local laws

Even if a state does not address commuter benefit programs, employers administering a transportation plan should keep in mind three types of state laws that may apply:

- **Wage withholding laws.** These restrictions may come into play if an employer imposes automatic elections. Many states require an employee's written consent for deductions not required by a law or court order.
- **Escheat laws.** These laws apply to any unclaimed money, which becomes state property after a specified duration. These laws typically come into play when employees with unused transportation benefits terminate employment or otherwise become ineligible to participate. One solution is to revert all unclaimed amounts to the employer after a time frame shorter than the duration triggering most escheat laws (for example, after 180 days). A plan could allow balance restoration if an employee is rehired or otherwise regains eligibility.
- **Unclaimed property laws.** What about reimbursement checks that are never cashed? State laws may dictate that these checks are unclaimed property that belongs to the state until the owner submits a claim. Limiting reimbursements to electronic fund transfers would help avoid this result.

Consultation with legal counsel on these issues is recommended.

Only a few jurisdictions require employers to provide a nontaxable commuter benefits program. Others provide tax-related incentives for these programs. The sections below summarize state and local laws relating to commuter benefits.

California

This state's tax [law](#) provides a broader tax exclusion than federal law, allowing tax-free reimbursements for "ridesharing arrangements," including subscription taxi pools, commuting costs to and from a telecommuting facility, and other means of transportation not covered by federal law. California also does not impose a monthly limit.

Maryland

Maryland law (Env. Code § [2-901](#)) offers a 50% tax credit (up to \$100 per employee per month) for the cost of a commuter benefit program providing transit, van-pooling or car-pooling benefits, a guaranteed ride home, cash in lieu of parking; telework, or employer-funded active transportation or multimodal commuter last-mile connection. The [Commuter Choice Maryland](#) program requires [registration](#).

Massachusetts

In years past, Massachusetts monthly limits for transportation benefits differed from the federal monthly limits. For example, [Technical Information Release \(TIR\) 21-12](#) set the state 2022 limits at \$285 for parking, \$150 for combined transit pass and commuter highway vehicle transportation benefits. Federal 2022 monthly limits (based on IRC § 132(f)) were \$280 for each of these benefits. The reason was the state's tax system conformed to the federal tax code in effect on Jan. 1, 2005.

However, a recent [TIR](#) — interpreting Section 30 of the [FY 2023 budget](#) enacted in July 2022 — confirms that retroactive to Jan. 1, 2022, state limits now mirror federal limits. As a result, Massachusetts employers should confirm their state limits match the federal limits (\$300 for each type of benefit in 2023).

Minnesota

Employee contributions for employer-provided parking are subject to state sales tax, even though the payments are through pretax contributions, according to a court ruling upholding a Revenue Commissioner's order ([Allina Health Sys. v. Commissioner of Revenue](#), No. 8564-R (MN Tax Court, May 8, 2014)).

New Jersey

New Jersey requires employers with 20 or more employees (not covered by a collective bargaining agreement) to offer a pretax benefit for a commuter highway vehicle or mass transit to all New Jersey employees. Telecommuting and other “alternative means” of minimizing traffic, such as compressed workweeks, car pools and similar measures, are permissible, but the mandate does not include parking. New Jersey employers can include parking as a fringe benefit, but it does not count for compliance with the state mandate. The law prohibits waiting periods. For more details, see [New Jersey to mandate employers offer pretax transit benefits](#) (March 5, 2019).

Los Angeles

Several years ago, a state law ([2018 Ch. 173](#), AB 2548) authorized the Los Angeles County Metropolitan Transportation Authority (LACMTA) to implement an employer pretax commuter benefit ordinance. The law limited the commuter benefit mandate to employers with 50 or more full-time employees at a worksite in the LACMTA operating area. The benefit could have been used to pay expenses for van pools, transit and parking at park-and-ride and transit lots. However, because LACMTA failed to pass an

ordinance before Jan. 1, 2022, no mandate is in effect. Employers with more than 249 employees at a worksite should comply with the [South Coast Air Quality Management District rule](#).

New York City

An ordinance ([Int. 0295A-2014](#)) implementing New York City Admin. Code [§ 20-926](#) applies to employers with at least 20 employees who work an average of 30 or more hours per week in the city. The ordinance exempts governmental employers, employees subject to a collective bargaining agreement and employers not required to pay payroll taxes.

Covered employers must provide their New York City full-time employees a pretax commuter benefit after four weeks of employment. The commuter program may include but cannot be limited to parking. The benefit must comply with IRC § 132(f). To show compliance, employers need to meet one of two requirements:

- Each eligible employee is offered an opportunity to purchase the maximum pretax transit benefits available under federal law.
- The employer provides or pays for employee mass transit or a commuter van.

[Rules](#) waive penalties for a first violation if the employer complies within a 90-day "cure period" after receiving notice from the city.

Philadelphia

Effective Dec. 31, 2022, a Philadelphia [ordinance](#) requires covered employers to offer a commuter transit benefit program to covered employees. Covered employers are those employing at least 50 covered employees within the city limits. Covered employees must have worked at least 30 hours per week within the city limits for the same employer in the past 12 months.

The program must cover expenses for mass transit and commuter highway vehicles. The program must also provide an alternative for reimbursement of qualified bicycle-commuting expenses (up to \$20 per month) in accordance with IRC § 132(f). The program does not need to cover parking.

An employer may satisfy the obligation by offering one of these three options:

- An IRC § 132(f) transportation plan under which employees pay for coverage on a pretax basis
- Payments for transit expenses at the current federal levels (\$300 for 2023)
- A combination of the first two options

The Delaware Valley Regional Planning Commission — which covers the Philadelphia metropolitan area — has made available a one-page [summary](#) and a [resource page](#). Daily [penalties](#) for noncompliance are in the \$150–\$300 range.

San Francisco Bay Area

The San Francisco [Bay Area Commuter Benefits Program](#) requires covered employers to offer full-time employees in the area a commuter benefit. Covered employees are those working an average of at least 20 hours per week in the prior calendar month within the area's geographic boundaries; seasonal or temporary employees are excluded. The Metropolitan Transportation Commission and the [Bay Area Air Quality Management District](#) established [the program](#) and issued [regulations](#).

Businesses with 50 or more full-time employees working in the covered area must comply with the mandate and register a commuter benefit plan. Employers determine their number of full-time employees by calculating the average number of employees per week who worked in the covered area at least 30 hours per week during the prior three-month period.

More about the Bay Area

Several California cities have their own commuter benefit mandates. However, these cities are located in the San Francisco Bay Area, so the cities' ordinances do not apply when the Bay Area mandate does.

- **San Francisco, CA.** This [ordinance](#) requires employers to provide a commuter benefit program that supports and encourages employees to bike, take transit and carpool to work. Businesses are subject to the ordinance if they have a San Francisco location and 20 or more employees nationwide. Businesses must complete a [Commuter Benefit Compliance Reporting Form](#).
- **Berkeley, CA.** This [ordinance](#) requires employers with 10 or more employees either based in Berkeley or with offices/outlets located there to offer a commuter benefit program. Employees include part-timers working an average of 10 or more hours per week. The program can be one of the following:
 - An IRC § 132(f) transportation plan allowing employees to exclude transit, van-pooling, or bicycle expenses from taxable wages and compensation, as allowed by federal tax law (this option spares employees from income taxes and employers from payroll taxes on the benefits)
 - A transit subsidy equivalent to the value of an Alameda-Contra Costa (AC) Transit regular (local) monthly pass
 - An employer-provided shuttle service
- **Richmond, CA.** This [ordinance](#) requires all registered businesses in Richmond with 10 or more employees who work an average of at least 10 hours per week to offer one of the following:
 - A program consistent with IRC § 132(f) allowing employees to make pretax contributions for commuting costs related to transit passes, van pools or bicycles, up to the federal maximums
 - An employer-paid program that supplies transit passes or reimburses employees for van-pooling charges at least equal in value to the purchase price of an adult monthly transit pass for the local transit agency system(s)

- Employer-provided transportation, furnished at no cost to employees, in a van pool, bus or similar multipassenger vehicle operated by or for the employer
- Any alternative commuter benefit preapproved by the city

Seattle, WA

By [ordinance](#), businesses with 20 or more employees must provide pretax transportation fringe benefits to employees working at least 10 hours per week in the city. To determine workforce size, an employer must count not only full-time employees but also part-time and temporary workers, whether located in the city or elsewhere. The mandate exempts nonprofit and government employers.

Covered employers must offer a pretax commuter benefit (other than parking) to covered employees within 60 days after date of hire. The transportation plan must comply with IRC § 132(f). More information is available on the city's [website](#).

Washington, DC, area

Washington, DC

Employers with 20 or more employees working in the district must offer those workers an option for pretax transit benefits. The DC Transit Ordinance (DC Code [§ 32–151](#)) requires employers to offer employees one of three options:

- A pretax transit fringe benefit compliant with IRC § 132(f)
- Employer-paid benefit transit passes or reimbursement of van-pooling or bicycling costs
- Employer-provided transportation at no cost to covered employees in a van pool or bus operated by or for the employer

This [District Department of Transportation \(DDOT\) resource page](#) provides more details

In 2020, Washington, DC, amended the mandate to discourage employers from offering subsidized employee parking benefits. The amendment ([A23-305](#)) targets employers with 20 or more employees working in the district that offer them a paid or subsidized parking benefit. These employers must offer employees a “clean-air transportation fringe benefit” option equal to the market value of the parking benefit in addition to the employee’s normal compensation. The clean-air transportation benefit can take the form of a transit pass, commuter highway vehicle or reimbursement of bicycling costs. If an employee’s estimated transportation costs are less than the market value of employer-provided parking, the employer must pay the difference as additional compensation and/or as an increased contribution to the employee’s health coverage. For more information, see the [DC parking cashout law guide for employers](#).

Alternatively, the employer could either develop a transportation demand management (TDM) plan — if submitted to DDOT by Jan. 15, 2023 — or pay a Clean Air Compliance fee to [DDOT](#). The TDM plan had

to list strategies and a timeline for reducing commuter trips by car by at least 10% from the previous year, until 25% or less of commuter trips are by car, including for-hire vehicles (like Uber or Lyft). A [template](#) is available for the plan. The Clean Air Compliance fee is \$100 per month for each employee offered parking benefits.

More information is available in DC's [Employer commuter benefits toolkit](#).

Montgomery County, MD

The Montgomery County Department of Transportation reimburses employers that have a commuter benefit program. After an employer pays for the first \$25 per month of an employee's commuting costs via buses or van pools, the [FareShare Program](#) reimburses the employer the remainder of \$280 per employee per month. The maximum reimbursement is \$40,000 per year per employer.

Related resources

Non-Mercer resources

Federal

- [IRC § 132\(f\)](#)
- [IRC § 274](#)
- [Treas. Reg. § 1.132-9](#)
- [Treas. Reg. § 1.274-13](#)
- [IRS Form W-2 and instructions](#)
- [IRS Publication 15-B](#)
- [Rev. Proc. 2022-38](#) (IRS, Oct. 18, 2022)
- [Information Letter 2022-0002](#) (IRS, Feb. 25, 2022)
- [Information Letter 2021-0027](#) (IRS, Oct. 28, 2021)
- [Information Letter 2020-0031](#) (IRS, Sept. 25, 2020)
- [Information Letter 2020-0024](#) (IRS, Sept. 8, 2020)
- [Chief Counsel Memorandum 201949019](#) (IRS, Aug. 14, 2019)
- [Notice 2018-100](#) (IRS, Dec. 10, 2018)
- [Notice 2018-99](#) (IRS, Dec. 10, 2018)

- [Pub. L. No. 115-97](#), the Tax Cuts and Jobs Act (Congress, Dec. 22, 2017)
- [Information Letter 2017-0007](#) (IRS, Jan. 25, 2017)
- [Information Letter 2016-0085](#) (IRS, Oct. 5, 2016)
- [Information Letter 2016-0011](#) (IRS, Feb. 19, 2016)
- [Private Letter Ruling \(PLR\) 201532016](#) (IRS, April 30, 2015)
- [Rev. Rul. 2014-32](#) (IRS, Nov. 21, 2014)
- [Information Letter 2014-0017](#) (IRS, May 13, 2014)
- [Information Letter 2010-0146](#) (IRS, March 25, 2010)
- [Information Letter 2004-0201](#) (IRS, Oct. 21, 2004)
- [Rev. Rul. 2004-98](#) (IRS, Sept. 29, 2004)
- [PLR 200347003](#) (IRS, July 11, 2003)
- [Information Letter 2002-0117](#) (IRS, June 11, 2002)
- [Information Letter 2002-0113](#) (IRS, May 15, 2002)
- [Information Letter 2002-0003](#) (IRS, Sept. 24, 2001)
- [Information Letter 2001-0050](#) (IRS, Jan. 28, 2001)
- [Chief Counsel Memorandum 200105007](#) (IRS, Sept. 28, 2000)

State

- [CA Rev. and Tax. Code § 17149](#) (Legislature)
- [MD Env. Code](#) (General Assembly)
- [MA FY 2023 final budget](#) (2022 Ch. 126) (General Court)
- [MA Technical Information Release \(TIR\) 23-1](#) (Department of Revenue (DOR), Jan. 5, 2023)
- [MA TIR 21-12](#) (DOR, Nov. 16, 2021)
- [Allina Health Sys. v. Comm’r of Revenue](#), No. 8564-R (MN Tax Court, May 8, 2014)
- [2019 Ch. 38, SB 1567](#) (NJ Legislature, March 1, 2019)

Local

- Montgomery County, MD, [FareShare Program](#) (Department of Transportation)
- New York City [commuter benefit law FAQs](#) (Department of Consumer Affairs)
- New York City Admin. Code [§ 20-926](#)
- New York City Rules [Tit. 6, Ch. 8](#)
- New York City [Int. 0295A-2014](#) (City Council, Oct. 20, 2014)
- Philadelphia [Bill No. 22033701](#) (City Council, June 9, 2022)
- San Francisco [Bay Area Commuter Benefits Program](#)
- San Francisco Bay Area Quality Management District [Regulation 14, Rule 1](#)
- Seattle [Commuter Benefits Ordinance Q&As](#) (Office of Labor Standards)
- Seattle Municipal Code [Tit. 14, Ch. 14](#)
- Seattle Human Rights Rules [Ch. 180](#) (Office of Labor Standards)
- Washington, DC, Code [Tit. 32, Ch. 1B](#)
- [Washington, DC, Act 23-305](#) (City Council, April 27, 2020)
- [DC Parking Cashout Law Guide](#) (Washington, DC, Department of Transportation)

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- [New Jersey to mandate employers offer pretax transit benefits](#) (March 5, 2019)

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