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NEW JERSEY TO MANDATE EMPLOYERS OFFER PRETAX TRANSIT BENEFITS

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New Jersey employers with at least 20 employees in the state will need to begin offering those employees pretax transportation fringe benefits covering commuter highway vehicle and mass transit costs under a new law ([SB 1567](#)). Employers will need to implement the program by March 1, 2020, or the effective date of [New Jersey Department of Labor and Workforce](#) regulations, whichever occurs first.

COVERED EMPLOYEES

The benefit applies to employers and employees covered by the state's unemployment insurance law. Employers covered by a collective bargaining agreement (CBA) are exempt until any current CBA expires. The mandate doesn't specify how soon after hire employees must be offered these benefits or impose any notice or posting requirements. These issues may be addressed in regulations.

MANDATED BENEFIT

The pretax commuter benefit must comply with the federal tax code (IRC [§ 132\(f\)](#)), which allows employers to offer employees a choice between taxable compensation or nontaxable qualified transportation fringe benefits. Employers must allow covered employees to elect up to the maximum benefit level permitted by federal law (\$265 per month in [2019](#)). The mandate applies to commuter highway vehicles, like vanpools, and mass transit, but doesn't include parking. New Jersey employers can include parking in their fringe benefit program if they want to do so, but parking won't count for compliance with the New Jersey mandate.

NO FEDERAL DEDUCTION

While New Jersey's law may require employers to offer a pretax commuter benefit, they won't be able to deduct that expense from federal corporate income taxes. The federal tax code generally allows a corporate deduction for employee salaries or other compensation — including benefits — paid for services. However, Internal Revenue Code [Section 274](#) disallows or limits various employer deductions. The 2017 Tax Cuts and Jobs Act ([PL 115-97](#)) amended Section 274 to eliminate the employer deduction for qualified transportation fringe benefits that are excluded from employees' taxable income under [Section 132\(f\)](#). The act also requires nonprofit employers to pay unrelated business income taxes on those fringe benefits (IRC [§ 512\(a\)\(7\)](#)). Employers will need to discuss any New Jersey tax-favored status with their tax advisers.

WIDENING TREND

New Jersey is the first state to enact such a mandate. However, several large metropolitan areas — New York City, San Francisco, Seattle, and Washington, DC — have passed similar laws. In addition, California has authorized a program in the Los Angeles area that would impose transit benefit requirements on local employers.

EMPLOYER ACTION

Companies that don't currently offer pretax transportation fringe benefits in New Jersey will need to do so in the coming year. Given the increasing popularity of these local laws, multijurisdictional employers may want to consider a national program that complies with the federal regulations and offers transit benefits alone or in addition to parking. In some locations, additional posting obligations may apply. Employers will also want to discuss this issue with their tax advisers to determine the impact.

RELATED RESOURCES

Non-Mercer Resources

- [SB 1567](#) (New Jersey Legislature, March 1, 2019)
- [Press Release](#) (New Jersey Governor's Office, March 1, 2019)
- [Notice 2018-99](#), Parking Expenses for Qualified Transportation Fringes Under §§ 274(a)(4) and 512(a)(7) of the Internal Revenue Code (IRS, Dec. 10, 2018)
- [IRC § 132\(f\)](#), Exclusion From Gross Income for Qualified Transportation Fringe Benefits (House Office of the Law Revision Counsel)
- [IRC § 274\(a\)\(4\)](#), Disallowance of Certain Entertainment, Amusement, Recreation or Qualified Transportation Fringe Benefits (House Office of the Law Revision Counsel)
- [IRC § 512\(a\)\(7\)](#), Increase in Unrelated Business Taxable Income by Disallowed Fringe Benefits (House Office of the Law Revision Counsel)
- [PL 115-97](#), Tax Cuts and Jobs Act of 2017 (Government Printing Office)

Mercer Resources

The following articles are available from Mercer's US [website](#):

- [Dos and Don'ts for Communicating with Employees on the New Tax Law](#) (Jan. 5, 2018)
- [Tax Bill Crosses Finish Line — Impact on Health and Fringe Benefits](#) (Dec. 20, 2017)

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