

## What Employers Should Know About the New Transit Benefit Law In New Jersey

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On March 1, 2020 the [New Jersey Transit Benefits Law](#) (“Law”) became effective, requiring New Jersey employers to offer their employees pre-tax transportation benefits (“transit benefits”). The Law requires an employer to set up a benefit program that allows employees to set aside pre-tax salary benefits into a separate account to cover qualified mass transit and parking expenses associated with the commute to work. Contributions to a commuter account are deducted from employee paychecks on a pre-tax basis, reducing the taxable income of employees.

Employers with 20 or more employees are required to offer transit benefits to their employees. There are two different deadlines for compliance with the Law for those employers who have both employees who are subject to a collective negotiations agreement (“represented employees”) and those that are not subject to a collective negotiations agreement (“non-represented employees”). Employers with non-represented employees were required to provide transit benefits as of March 1, 2020. Employers with represented employees must offer transit benefits at the expiration of their collective bargaining agreement.

### **Benefits Under the New Jersey Transit Benefits Law**

Under the Law, employers must provide transit benefits consistent with the “provision and limits” of Section 132(f)(1) of the Internal Revenue Code for the following: (i) commuter highway vehicle benefits (ii) any transit pass and (iii) qualified parking. The definitions of the above three terms, contained with Section 132(f) of the Code, are as follows:

- A commuter highway vehicle is “any highway vehicle” which has the seating capacity of at least six (6) adult passengers, and at least 80% of the mileage use of the vehicle can reasonably be expected to be used to transport employees to work, and on trips where the vehicle is at least half-capacity (not including the driver, transporting at least three adult passengers). Commuter highway vehicles include vanpools and rideshares such as Uber Pool and Lyft Shared.
- A transit pass means any pass, token, fare card, voucher, or similar item used on mass transit facilities or provided by any person in the business of transporting people for compensation who transports them in a commuter highway vehicle, as defined above. Mass transit facilities include: train, bus, subway, light rail, and ferry.
- Qualified parking means parking provided to an employee on or near the employer’s property or on or near the location from which the employee commutes to work by means of a commuter highway vehicle or use of a transit pass. Out-of-pocket expenses such as parking fees for meters, garages and lots qualify, as long as they are incurred when an employee is commuting by means of a commuter highway vehicle or use of a transit pass. Parking at or near an employee’s home is not an eligible expense.
- Employees cannot claim commuting expenses such as tolls and gas under the New Jersey Transit Benefits Law.

The 2020 monthly limit for commuter benefits is \$270 of expenses incurred while using a transit pass or commuter highway vehicle, and an additional \$270 of expenses incurred for qualified parking. Thus, an employee would be entitled to claim up to \$550 per month of qualifying transit benefit expenses.

## Penalties for Non-Compliance

A penalty in the amount of \$100 to \$250 dollars may be issued for a first violation of the New Jersey Transit Benefits Law. However, employers have 90 days to cure the violation before the penalty is imposed. If the employer does not cure the violation within the 90 day period, it will be subject to a \$250 penalty for each additional 30 day period in which the employer fails to offer the benefit.

The Commissioner's implementing rules and regulations, which have not yet been published, will provide employers with more information as to the interpretation of this Law.

## **Takeaway: Notify your employees that they are entitled to benefits under the New Jersey Transit Benefits Law.**

If you are an employer and need help navigating the New Jersey Transit Benefits Law, or any other New Jersey employment law, contact [Stephanie Gironda](#) or any member of the Wilentz [Employment Law Team](#).

## Attorney

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