

## Know Before You Go: New Jersey Transit Benefits Law

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On March 1, 2019, Governor Philip Murphy signed into law Senate Bill No. 1567 (“New Jersey Transit Benefits Law” or “Law”), which requires employers to offer pre-tax transportation fringe benefits (“transit benefits”) to employees. The Law requires that an employer set up a benefit program that allows its employees to set aside pre-tax funds in a separate account to pay for 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. All employers with 20 or more employees are required to offer transit benefits to their employees. **As of March 1, 2020, employees (non-union) must be provided with transit benefits.** Unions must address this issues when their current contract expires during the contract negotiations.

### 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 (“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) adults (not including the driver), 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) (that is, transporting at least three (3) adults, not including the driver). 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 Not Complying with the New Jersey Transit Benefits Law

Although the law became effective immediately on March 1, 2019, it is “inoperative,” *i.e.*, no penalties will be assessed, until March 1, 2020. A penalty of \$100 to \$250 dollars will be issued for a first violation of the New Jersey Transit Benefits Law. However, employers have ninety days to cure the violation before the penalty is

imposed. If the employer does not cure the violation within 90 days, 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. Please note that the Earned Sick Leave regulations were not published until 15 months after the law was passed! Additionally, although a signed waiver by an employee who does not wish to take advantage of the benefits offered by the New Jersey Transit Benefits Law is not required, it is our suggestion, because there are penalties for non-compliance with the law, that obtaining signed waivers is a good idea.

If you have any questions regarding the New Jersey Transit Benefits Law, contact [Tracy Armstrong](#) at 732-352-9858.

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