



San Francisco Bay Area Employers Now Must Offer Commuter Benefits

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Under the new Bay Area Commuter Benefits Program (the "Program"), employers with at least 50 full-time employees in the San Francisco Bay Area now are required to provide commuter benefits to employees at all Bay Area locations. The Bay Area Air Quality Management District ("Air District") and the Metropolitan Transportation Commission established the Program, and it covers employers in the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara, and parts of Solano and Sonoma counties.

Requirements

Under the Program, all public, private, and non-profit employers with 50 or more full-time employees in the covered counties are required to do the following by September 30, 2014:

- register through www.511.org;
- designate a Commuter Benefits Coordinator;
- provide one of three pre-approved commuter benefits options or an alternative commuter benefit option, approved by the Air District;
- notify covered employees of the commuter benefit option selected and how to utilize the benefit; and
- maintain records documenting compliance, for three years.

For purposes of calculating whether an employer has 50 or more full-time employees:

- a "full-time employee" is one who performed an average of at least 30 hours of work per week during the previous calendar month; and
- the number of full-time employees is the average number of full-time employees per week, on payroll, during the most recent 3-month period.

However, once covered by the Program, an employer must provide commuter benefits to any "covered employee," not just full-time employees. Covered employees are employees who performed an average of at least 20 hours of work per week during the previous calendar month.

Field employees (those whose primary job responsibilities are at a temporary job site and who do not report to an employer's home office or other permanent job location) and seasonal and temporary employees (those who work 120 or fewer days per year) are excluded from the Program, meaning they are not included in the full-time employee count and are not entitled to benefits as covered employees.

The Four Commuter Benefits Options

1. **Pre-Tax Benefit:** The employer sponsors a program that allows employees to exclude their transit or vanpool costs from taxable income through a program compliant with Section 132(f) of the Internal Revenue Code, up to the maximum allowable amount (currently \$130 per month).
2. **Employer-Provided Subsidy:** The employer provides a subsidy equal to the cost of commuting via transit or vanpool, or \$75, whichever is lower.
3. **Employer-Provided Transit:** The employer provides free or low cost bus, shuttle, or vanpool service operated by or for the employer. The employer may charge no more than \$2.00 per employee for a short-distance one-way trip (e.g. from a transit station to the worksite), or no more than \$0.20 per mile per employee for a long-distance one-way trip (e.g. from the employee's home community to the worksite).
4. **Alternative Commuter Benefit:** The employer can propose an alternative commuter benefit that provides at least the same reduction in single-occupant vehicle trips as Options 1–3. Possible alternative benefits include carpool subsidies, bicycle subsidies, telecommuting, and on-site amenities, among other options. The benefit must be proposed in writing, comply with Air District guidelines, and be approved in writing by the Air District.

The Program provides employers with significant flexibility to choose the commuter benefit option that best suits the needs of the employer and its workforce. Factors that employers will want to consider will include the total cost, number of employees, typical employee commutes, the geographic spread of employees' homes and job sites, and the potential tax benefits of each option, among other factors. Normally, Option 1, the Pre-Tax Benefit, will be the least costly, because the only employer expense should be the incremental expense of adopting and maintaining the program (and, because the benefit is tax-free, employers should save somewhat on payroll taxes). For employers that do not want to self-administer, there are a number of commuter benefit program providers.

Related Local Ordinances

Employers with fewer than 50 full-time employees also need to be aware that similar commuting benefits ordinances have been implemented in the city and county of San Francisco, the San Francisco International Airport ("SFO"), and the cities of Berkeley and Richmond. San Francisco and SFO require employers with 20 or more employees nationwide to offer commuter benefits. Berkeley and Richmond require employers with 10 or more employees nationwide to offer commuter benefits.

Enforcement

Program violations are subject to civil penalties under California Health and Safety Code § 42402 et seq. The Air District has indicated that it will address violations on a "case-by-case" basis, and that its goal is to achieve compliance; thus, enforcement actions could result in both required compliance and monetary penalties.

Conclusion

Given that the Program generally imposes reasonable requirements, benefits both employers and employees, and is likely to be enforced, large Bay Area employers should ensure compliance with the Program by September.

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