



## One Minute Memo™

# San Francisco Mandates Employers to Provide Transportation Benefits

On August 22, 2008, San Francisco Mayor Gavin Newsom signed into law *Ordinance No. 199-08*, which requires covered employers to offer their San Francisco employees at least one of three transportation benefit options. The law is the first of its kind in the United States. It was added as Section 421 of the San Francisco Environment Code, and is effective September 22, 2008. Employers are required to have an appropriate transportation benefit program in place within 120 days of the effective date, that is on or before January 19, 2009.

### *The Transportation Benefits Program*

The new law requires covered employers to provide at least one of the following transportation benefit programs to their San Francisco employees:

1. A program under Internal Revenue Code ("Code") Section 132(f) that allows employees to make pre-tax contributions to pay commuting costs incurred for transit passes or vanpool charges (but not for parking), up to a maximum level allowed by federal law (currently \$115 per month);
2. A program where the employer supplies a transit pass for the public transit system requested by each employee or reimbursement for equivalent vanpool charges at least equal in value to the purchase price of the benefit, which does exceed the cost of an adult San Francisco MUNI Fast Pass (currently \$45 per month); or
3. A transportation program whereby transportation is provided by the employer at no cost to the employee in a vanpool, bus, or similar multi-passenger vehicle operated by or for the employer.

### *Covered Employers*

The law applies to private sector companies that employ an average of twenty or more persons per week who perform work for compensation. All full-time, part-time, and temporary employees, including persons made available through the services of temporary services or staffing agencies, regardless of whether they work within the geographic boundaries of San Francisco, will be counted for purposes of determining a company's average number of employees. Covered employers must provide the transportation benefit to any employee who (i) works an average of at least ten hours per week within the geographic boundaries

of San Francisco for the same employer within the previous calendar month, and (ii) qualifies as an employee entitled to minimum wages under the California minimum wage law or is a participant in a Welfare-to-Work program.

### *Administration, Enforcement, and Penalties*

Failure to comply with the law can result in the assessment of either administrative or civil penalties, but not both for the same violation. Employers may be fined an amount not to exceed \$100 for the first violation, \$200 for the second violation within the same year, and \$500 for each additional violation within the same year.

### *Employer Considerations*

Since employers must have an appropriate transportation benefit program in place on or before January 19th of next year, it is important for employers to begin considering their options immediately. In weighing the three types of transportation benefit programs, employers should consider providing a program under Code Section 132(f) since a program under the Code would decrease the taxable earnings of employees and, in turn, reduce the payroll taxes owed by employers.

If you have any questions or would like assistance implementing a transportation benefit program, please contact the Seyfarth attorney with whom you work, or any Employee Benefits attorney on our website ([www.seyfarth.com/EmployeeBenefits](http://www.seyfarth.com/EmployeeBenefits)).



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