

One Minute Memo®



COVERED EMPLOYERS IN D.C. WILL BE REQUIRED TO PROVIDE TRANSPORTATION BENEFITS TO EMPLOYEES BY JANUARY 1, 2016

By Fred Singerman and Willow J. Prall

Beginning January 1, 2016, covered employers in the District of Columbia will need to comply with a new requirement to provide employees with a transportation benefit program. The requirement is set forth in Subtitle A of Title III of the Sustainable DC Omnibus Amendment Act of 2014 (“Act”)(D.C. Law 20-142) that was signed by D.C. Mayor Gray on July 29, 2014. However, implementing rules and penalties for non-compliance are not yet in place.

In general, a transportation fringe benefit program that provides the maximum benefit available under Section 132(f) of the Internal Revenue Code (“Code”) will comply with the new D.C. requirement, but employers who do not already offer such a benefit program may need to set one up by 2016.

An employer¹ with 20 or more employees is covered under the Act and must provide at least one of the following transportation benefit programs to employees:

- (1) A pre-tax payroll withholding election that provides commuter highway vehicle, transit, or bicycling benefits at levels at least equal to the benefits permitted under Section 132(f)(2) of the Code,
- (2) An employer-paid benefit program where the employer supplies, at the election of the employee, a public transit pass or reimbursement of vanpool or bicycling costs in an amount at least equal to the purchase price of a transit pass for an equivalent trip on a public transportation system, or
- (3) Employer-provided transportation at no cost to the covered employee in a vanpool or bus operated by or for the employer.

The Act permits the Mayor to expand the definition of “covered employer” to include employers with fewer than 20 employees as of January 1, 2017.

¹ The term “employer” means an “employer” as defined in section 3(3) of the Minimum Wage Act Revision Act of 1992 (D.C. Law 9-248; D.C. Official Code - § 32-1002(3)), and does not include the United States or the District of Columbia.

A covered employer that fails to provide a transportation benefit program as required under the Act is subject to civil fines and penalties under the Department of Consumer and Regulatory Affairs Civil Infractions Act. At this point, however, neither a fixed effective date for penalties to apply nor guidance on the amount of the penalties has been issued, and we do not yet have rules to implement the provision.

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