

July 29, 2019

Seattle Ordinance Requires Pre-Tax Transit Benefits

On October 8, 2018, the Mayor of the City of Seattle signed into law a new [Commuter Benefits Ordinance](#), which becomes effective on January 1, 2020.

The ordinance applies to businesses with 20 or more employees worldwide ("Covered Employer"). However, the ordinance only applies to employees who worked at least an average of ten hours or more per week in the previous month in the City of Seattle ("Covered Employees"). Covered Employers will be required to offer their Covered Employees the opportunity to make pre-tax payroll deductions for transit, such as buses, light rail, ferry, water taxi, and van pool commuting. The employer is not required to offer a qualified parking or bicycle benefit but may offer those benefits.

The ordinance encourages commuters to use transit options other than single occupancy vehicles, thus reducing traffic congestion and carbon emissions. Because the deduction is pre-tax, the law has the added benefit of lowering the tax bills for both workers and businesses.

For purposes of determining whether a business is a Covered Employer, a business calculates the number of employees by counting the average number of employees who worked for compensation each calendar week during the prior calendar year. In doing so, businesses must remember to do the following:

- Count all employees worldwide;
- Count employees of all employment statuses (full-time, part-time, seasonal, temporary, employees supplied by a placement agency, etc.); and
- Include any week during which at least one employee worked.

Employers should not include weeks where no employees worked or those employees covered by a collective bargaining agreement.

For new businesses, employers that did not have any employees during the previous calendar year count the average number of employees employed per calendar week during the first 90 calendar days that the employer engaged in business.

No later than January 1, 2020, all covered employers need to provide a pre-tax plan for commuter benefits to their covered employees. New employees should be provided an opportunity for pre-tax commuter benefits within 60 days of starting employment.

Covered Employers can meet their obligation under the ordinance by doing one of the following:

1. Allowing employees to make a pre-tax deduction up to the full amount allowed by federal law; or
2. Subsidizing all or part of the purchase price of a transit pass.

Please note that future rule making will impact these requirements, including about how using an employer subsidy will satisfy the ordinance's requirements. This information will be provided once available.

Tax-exempt organizations and government entities are exempted from these provisions.

Employer must retain records that document compliance with this new ordinance, including written documentation of the offer to employees, enrollment forms, and payroll records or pre-tax deductions. Records will need to be retained for three (3) years.

The Office of Labor Standards (OLS) looks forward to teaming up with Seattle's Department of Transportation, Commute Seattle, and community partners to equip workers and businesses, including the small business community, with the information and tools to understand these new requirements.

The Agency will create and distribute a poster giving notice of the rights afforded to them. Employers will be required to display the poster in a conspicuous and accessible place at any workplace or job site where any of their employees work. The notice will be provided in English and in the primary language(s) of the employees at any particular workplace.

In 2019 and 2020, the OLS will develop administrative rules and enforcement procedures for the ordinance. Employers are required to comply with the ordinance beginning January 1, 2020. However, OLS will not take enforcement action until January 1, 2021. During the period before enforcement begins, OLS, SDOT, Commute Seattle and other community partners will focus on educating workers and the business community, including small businesses, about the ordinance.

After January 1, 2021, OLS will accept complaints about alleged violations of this ordinance. The ordinance is designed with voluntary compliance in mind. OLS will investigate any complaints and may provide a business with a 90-day "cure" period during which time an employer has an opportunity to achieve compliance. Be aware that OLS may promulgate additional rules and guidelines regarding enforcement and penalties.

Helpful resources, including a Q&A booklet, are available at:

- [Seattle Codes](#)
- [Seattle Commuter Benefits Summary](#)
- [Commuter Benefits Q&A](#)
- [Commuter Ordinance](#)

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