



## COMPLIANCE BULLETIN

### New Jersey Commuter Benefit Law

As 2020 begins, employers have been correctly focused on the [new laws affecting New Jersey employers as of January 1, 2020](#). However, employers shouldn't lose sight of upcoming obligations. In New Jersey, as of March 1, 2020 (or possibly later if regulations implementing the law have not yet been adopted), employers with more than 20 employees will be required to offer pre-tax commuter benefits to employees.

The new rules apply to all employers and employees covered by the state's unemployment insurance law. Employers covered by a collective bargaining agreement (CBA) are exempt until any current CBA expires.

The pretax commuter benefit must comply with the federal tax code (Internal Revenue Code § 132(f)), which allows employers to offer employees a choice between taxable compensation or nontaxable qualified transportation fringe benefits. The law essentially mandates such an option – New Jersey employers must allow covered employees to elect up to the maximum benefit level permitted by federal law (\$270 in 2020). The mandate applies to commuter highway vehicles, like vanpools, and public transit, but does not include parking at either the employee's home or the worksite.

While New Jersey's law may require employers to offer a pretax commuter benefit, they won't be able to deduct that expense from federal corporate income taxes. The federal tax code generally allows a corporate deduction for employee salaries or other compensation – including benefits – paid for services. However, Internal Revenue Code Section 274 disallows or limits various employer deductions. The 2017 Tax Cuts and Jobs Act (PL 115-97) amended Section 274 to eliminate the employer deduction for qualified transportation fringe benefits. The act also requires nonprofit employers to pay unrelated business income taxes on those fringe benefits (IRC § 512(a)(7)). Employers should consult with tax professionals to assess the law's impact on their tax obligations.

New Jersey employers should be prepared to offer pre-tax commuter benefits in the coming year, and should be prepared to comply with regulations that will likely mandate posting rules, notice to employees, and a host of other requirements.

Innovative Benefit Planning can help to set up these benefits and ensure your commuter reimbursement program is compliant and stays up-to-date with each new development.

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