

# COMPLIANCE ALERT

## New Philadelphia Ordinance Will Require Employers to Offer Commuter Benefits in 2023

July 22, 2022

### Action Required:

- Review the new commuter benefit requirements.
- Consult with partners to implement a compliant program.

On June 22, Philadelphia Mayor Jim Kenney signed the [Employee Commuter Transit Benefit Programs](#) ordinance (the “Ordinance”). The Ordinance goes into effect on December 31, 2022, and requires employers with 50 or more covered employees, excluding government employers (“covered employers”) to provide commuter transit benefits to their employees beginning in 2023.

An employer must offer covered employees at least one of the following commuter transit benefit programs:

- An election of a pre-tax payroll deduction for “Mass Transit Expenses” or “Qualified Bicycle Expenses.”
- An employer-paid benefit supplying the employee a “Fare Instrument,” such as a pass, token, or fare card, at benefit levels at least equal to \$280 for calendar year 2022; or
- Any combination of the above two programs.

Fines ranging from \$150 to \$300 per day, with each day constituting a separate violation, may be imposed on employers found to be non-compliant. ■

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Under the new Ordinance, a “covered employee” is an employee who works at least 30 hours on average per week for compensation within the city of Philadelphia for the same employer within the previous 12 months. Work must be “for compensation,” which suggests that unpaid interns, volunteers, and those working in unpaid apprenticeships are not covered. Also, employees who work for two or more employers, but who do not average at least 30 hours per week with one of them, are excluded.

An employer must offer covered employees at least one of the following commuter transit benefit programs:

- An election of a pre-tax payroll deduction for:
  - “Mass Transit Expenses” (expenses incurred for either a “Fare Instrument,” such as a pass, token, or fare card, or expenses related to transportation in a Commuter Highway Vehicle<sup>1</sup>); or
  - “Qualified Bicycle Expenses” (which include reasonable expenses related to the purchase, maintenance, repair, and storage of bicycles regularly used for commuting to and from work), as allowed under the Internal Revenue Code’s (Code) provisions pertaining to the qualified bicycle commuting reimbursement.
- An employer-paid benefit whereby the covered employer supplies a Fare Instrument for a covered employee at benefit levels at least equal to the maximum amount that may be deducted for such programs pursuant to the fringe benefit tax exclusion limits under the Code (in Code § 132(f)(2)); or
- Any combination of the above two programs.

## What are the benefits levels that are considered to be the maximum limits under the Code for purposes of the Ordinance’s requirements?

The ordinance intends for benefit levels to be equal to the maximum amounts that the Code permits for deductions of such benefits. With respect to the employer-paid Fare Instrument, under the Code, the monthly limit for the fringe benefit exclusion for transportation in a Commuter Highway Vehicle and any transit pass is \$280 for calendar year 2022.

With regard to the Qualified Bicycle Expenses, under the Code, for years 2018 through 2025, employee cyclists are not permitted to exclude qualified bicycle commuting reimbursements from their income for federal income tax purposes. However, employers are permitted to deduct these reimbursements as a business expense for years 2018 through 2025 for federal income tax purposes.

<sup>1</sup>To qualify as a “Commuter Highway Vehicle,” the vehicle must be used to transport groups of employees between their homes and work. This means that the vehicle must have a seating capacity of at least six people, and at least three employees must be transported to work 80% of the time the vehicle is used (excluding the driver).

### How is the new Ordinance enforced and what are the penalties for noncompliance?

Covered employees alleging a violation of the new Ordinance can report their employer to the agency designated by the Mayor to enforce these benefits (as of the time of this writing, the agency has yet to be designated).

Upon receiving the complaint, the enforcement agency will have 30 days to mediate the matter. Following this mediation period, a written warning will be issued to the employer if it is determined that the employer is non-compliant. If the employer remains non-compliant for 30 days following the issuance of the written warning, the enforcement agency may ask a court to compel compliance and impose fines ranging from \$150 to \$300 per day, with each day constituting a separate violation. ■

**If you have any additional questions, please  
call your Corporate Synergies Account Manager  
or 866.CSG.1719.**