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On March 1, 2019, New Jersey established a transit benefit ordinance that requires employers to offer employees pre-tax commuter transit benefits, consistent with certain “qualified transportation fringe” benefits, as defined in Section 132(f) of the Internal Revenue Code.

## Background

Qualified transportation fringe benefits under Section 132(f) of the Internal Revenue Code allow an employer to provide commuter and transit benefits to their employees that are tax-free up to a certain limit. This employer-provided voluntary benefit program allows employees to effectively reduce their monthly commuting or transit costs. In 2019, the monthly limit is \$265 for any commuter benefit or transit pass. While such benefits provide a tax benefit to employees, under the 2017 Tax Cuts and Jobs Act, employers are no longer allowed a federal income tax deduction for qualified transportation fringe benefits. The Act also requires tax-exempt employers to pay unrelated business income taxes on such benefits.

## New Jersey Requirements

Covered employers in New Jersey will be required to offer a “pre-tax transportation fringe benefit” to their employees. It appears that “covered employers” means employers with at least 20 employees, regardless of whether they all work in the State of New Jersey; however, clarification from the regulators on this would be helpful.

An employee under the new law is identified as anyone hired or employed by the employer and who reports to the employer’s work location, and mirrors the definition used in the unemployment compensation law. Certain temporary or limited exceptions exist for employees covered by a collective bargaining agreement and those employed by the federal government.

Some of the details regarding implementation of the program are still outstanding and the Commission of Labor and Workforce Development will adopt rules and regulations concerning the administration and enforcement of the benefit. Civil penalties will apply for non-compliance with this new law.

## Employer Action

While the ordinance takes effect immediately, it will not be enforced until final rules and regulations are released. The earliest enforcement is anticipated to be March 1, 2020, but is subject to change. Employers should determine whether their current employee demographic would require these benefits to be offered to their employees. Employers currently offering transportation fringe benefits to employees should review their current program to ensure compliance with the final rules and regulations in New Jersey once those are released.