

ALERT FOR SAN FRANCISCO BAY AREA EMPLOYERS COMMUTER BENEFITS REQUIRED AS OF SEPTEMBER 30, 2014

If you are an employer with 50 or more employees in the San Francisco Bay area, you will soon be dealing with a new law that will require you to provide a commuter benefits program to your employees.

THE LAW

Senate Bill 1339, signed into law in 2012, created the Bay Area Commuter Benefits Program, which will be implemented by the Bay Area Air Quality Management District (BAAQMD) and the Metropolitan Transportation Commission (MTC) on a pilot basis through the end of 2016. In response to SB 1339, the BAAQMD and MTC have written regulations which were finalized on March 19, 2014 and go into effect on September 30, 2014.

The commuter benefit requirement will apply to all employers for which an average of 50 or more full-time employees per week perform work for monetary compensation within the geographic boundaries of the Bay Area Air Quality Management District (BAAQMD). The law defines full-time employees as those working an average of 30 hours or more per week. The BAAQMD is comprised of the following counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo and Santa Clara, the southern portion of Sonoma County and the southwestern portion of Solano County.

EMPLOYER OPTIONS AND REQUIREMENTS

To comply with the law, employers must offer covered employees a commuter benefit under at least one of the four following options.

- **Option 1 - Pre-Tax Option:** The employer can allow employees to pay for their transit or vanpooling expenses with pre-tax dollars, through a Section 132(f) plan.
- **Option 2 - Employer-Provided Subsidy:** The employer may offer employees a direct transit or vanpool subsidy to reduce or cover the employees' monthly transit or vanpool costs. The amount of the subsidy would be equal to either the monthly cost of transit or \$75, whichever is lower.
- **Option 3 - Employer-Provided Transit:** An employer may furnish free or low-cost bus, shuttle or vanpool service directly to employees.
- **Option 4 - Alternative Commuter Benefit:** The regulations also allow employers to propose an alternative method that would be as effective as the other options in reducing single-occupant vehicle trips (and/or vehicle emissions). The proposal must be in writing and must be approved by the BAAQMD.

If you are an employer within the geographic boundaries of the BAAQMD, you should take the following steps to ensure your readiness to comply with this law by September 30, 2014:

1. **Determine if your organization is covered by the law.** To determine your full-time employee count, the regulations require you to calculate the average number of employees per week carried on the payroll over the course of the most recent three month period. Any person who performs services in return for monetary compensation and to whom your organization has provided or will provide an IRS Form W-2 is considered an employee for this purpose. If you have an average of 50 or more full-time employees per week within the geographic boundaries of the BAAQMD, you are a covered employer.
2. **Choose a commuter benefit option.** For most organizations, the easiest and lowest-cost option will be to establish a Section 132(f) pre-tax commuter benefit plan. This must be offered to all “covered employees.” Please note, the law defines a covered *employer* by reference to the number of 30 hour per week employees it has, but the regulations define “covered *employees*” as those who performed an average of at least 20 hours of work per week within the previous calendar month within the geographic boundaries of the BAAQMD. Seasonal employees (those working for the employer 120 days or less within the calendar year) do not have to be offered this benefit.
3. **Designate a Commuter Benefits Coordinator.** The regulations require employers subject to this law to designate a person who is responsible for implementing the commuter benefits program.
4. **Register with the BAAQMD.** Employers subject to this law must register with the BAAQMD’s Air Pollution Control Officer (APCO) no later than September 30, 2014. The following information must be supplied upon initial registration and updated and verified annually thereafter: employer name; the name, title and contact information for the employer’s Commuter Benefits Coordinator; total number of full-time employees and covered employees within the geographic boundaries covered by the law; the location of each covered worksite; and the commuter benefits option the employer has chosen to implement.
5. **Notify employees.** You must notify all covered employees that your organization is subject to the requirements of this rule and inform them which commuter benefit option(s) you will offer. The notice should also provide covered employees with information as to how they may apply for and receive the commuter benefit and provide a point of contact within the organization for further information. This notice can be made through e-mail, paper memos, in-house newsletters or bulletins and/or conventional or electronic bulletin boards. The notice must go out when the commuter benefit is first made available to employees, and then annually thereafter. Commuter benefits information must also be included as part of the employee benefits package and explained to all newly hired employees.
6. **Maintain and retain records.** You must keep records, files and documentation to establish your compliance with this law for a period of three years.

For more information on establishing a pretax commuter benefit program in your organization, please contact your Keenan representative.

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