

New Jersey to Require Certain Employers to Provide Pretax Transportation Fringe Benefits

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By [Michael K. Mahoney](#)

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Subject Employers

Every employer with at least 20 employees must offer all employees the opportunity to utilize a pretax transportation fringe benefit. When determining whether an employer has at least 20 employees, employees covered by a collective bargaining agreement are excluded. The federal government is also not required to provide such benefits under the law.

Covered Employees

The benefit must be offered to all employees who are covered by New Jersey's state unemployment insurance code.

Notably, the benefit must be offered to *all* employees. Employers that offered pretax transportation fringe benefits in New Jersey before S1567 was enacted should consider whether their current pretax transportation fringe benefit program contains any eligibility requirements that would exclude employees from participation. For example, programs that limited eligibility to employees working full time may need to be reconsidered with respect to New Jersey employees in light of the universal availability requirement.

Benefits Offered

"Pretax transportation fringe benefits" are defined as commuter highway vehicle and transit benefits under Internal Revenue Code (IRC) Section 132(f)(1). Notably, parking benefits, which are permitted under the IRC, are excluded from S1567. The pretax dollar limits of the IRC are also applicable.

Enforcement

The commissioner of the New Jersey Department of Labor and Workforce Development (NJDOL) is tasked with ensuring compliance. Civil penalties between \$100 and \$250 for a first violation may be assessed. An employer has 90 days to offer a pretax transportation fringe benefit before the civil penalty is imposed. After the 90-day period, each additional 30-day period will be considered a subsequent violation and result in a \$250 civil penalty.

Regulations and effective date

S1567 directs the NJDOL commissioner to issue implementing regulations, which are intended to be compatible with current practices for providing pretax transportation fringe benefits. The law will take effect on March 1, 2020, or once the regulations are adopted, whichever comes first.

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