



# COMPLIANCE BULLETIN

## Seattle Employers Must Offer Pre-tax Commuter Benefits in 2020

### HIGHLIGHTS

- Seattle employers with 20 or more employees must offer pre-tax commuter benefits for transit and vanpooling expenses.
- Covered employers must display a poster that explains the tax-free commuter benefits.
- Covered employers that violate this requirement may be subject to penalties.

### IMPORTANT DATES

#### Jan. 1, 2020

Covered employers must start offering a pre-tax commuter benefits program.

#### Jan. 1, 2021

Seattle starts enforcing the Ordinance's requirements.

### OVERVIEW

Beginning Jan. 1, 2020, Seattle employers with **20 or more employees** must establish pre-tax transportation fringe benefit programs. Transportation fringe benefit programs allow employees to set aside pre-tax dollars for certain work-related commuting expenses.

Seattle's [commuter benefits ordinance](#) (Ordinance) requires covered employers to provide pre-tax benefits for **transit passes and vanpooling expenses** up to the maximum amount permitted by federal tax law. Covered employers must also display a poster that describes employees' rights under the Ordinance, and comply with new recordkeeping requirements.

On Jan. 1, 2021, Seattle's [Office of Labor Standards](#) (OLS) will start enforcing compliance with the Ordinance.

### ACTION STEPS

Seattle employers with 20 or more employees should start taking steps to implement a pre-tax commuter benefits program. Employers should also watch for implementing regulations and a model poster from OLS before the Ordinance's effective date.

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## COVERED EMPLOYERS

Employers that employ **20 or more employees** worldwide are required to provide a pre-tax transportation fringe benefit program, effective Jan. 1, 2020. Tax-exempt organizations and government agencies are exempt from this requirement.

An employer calculates how many employees it has by counting the average number of employees who worked for compensation each calendar week during the prior calendar year.

All employees must be counted, including full-time, part-time, seasonal and temporary employees, as well as employees supplied by a placement or staffing agency.

If an employer has fewer than 20 employees in the prior calendar year, it is not required to provide commuter benefits to its employees in the current calendar year. However, an employer may decide to voluntarily provide these pre-tax benefits to its employees.

Also, new employers that did not have any employees in the previous calendar year must implement a pre-tax transportation fringe benefit program if they had an average of 20 or more employees per calendar week in their first 90 days of business.

## ELIGIBLE EMPLOYEES

Employers are required to offer pre-tax commuter benefits to employees who worked in Seattle for at least an average of **10 hours per week** in the previous month.

## TRANSPORTATION FRINGE BENEFITS

Internal Revenue Code (Code) Section 132(f) allows employees to use pre-tax dollars to pay for certain work-related commuting expenses, including qualified parking, transit passes and vanpooling. These pre-tax dollars are exempt from federal income taxes and Social Security taxes.

### *Compliance Deadline*

Seattle's pre-tax commuter benefits law goes into effect on Jan. 1, 2020. Covered employers are required to comply with the Ordinance's requirements by Jan. 1, 2020. However, OLS will not begin enforcement for another year after the effective date (that is, beginning Jan. 1, 2021). After Jan. 1, 2021, individuals have three years from the date of the alleged violation to file a complaint with OLS.

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## ***Qualified Expenses***

The Ordinance requires covered employers to offer pre-tax benefits for transit passes and vanpooling expenses.

<b>Transit passes</b>	Any passes, tokens, farecards, vouchers or similar items that allow employees to ride free of charge (or at a reduced rate) on mass transit or in a vehicle that seats at least six adults (excluding the driver) if a person in the business of transporting persons for pay or hire operates it. Mass transit may be publicly or privately operated and includes bus, rail or ferry.
<b>Vanpooling</b>	Transportation between the employee's residence and place of employment in a commuter highway vehicle that seats at least six adults (excluding the driver).

Although not required by the Ordinance, employers may also offer **qualified parking expenses** on a pre-tax basis. Qualified parking includes parking provided to employees at or near the employer's business premises. It also includes parking on or near the location from which employees commute to work using mass transit, commuter highway vehicles or carpools.

## ***Monthly Benefit Limits***

Federal law establishes a maximum amount of transportation fringe benefits that employees can exclude from income for tax purposes. These limits are subject to annual increases for inflation. For 2020, the maximum benefit levels are:

- ✓ Vanpooling and transit passes (combined): \$270 per month
- ✓ Qualified parking: \$270 per month

## **EMPLOYER COMPLIANCE**

To comply with the Ordinance, Seattle employers must implement a program by Jan. 1, 2020, that allows employees to set aside money from their paychecks on a pre-tax basis to pay for transit passes or vanpooling expenses (up to the full amount allowed by federal law). Employers can also comply with the Ordinance by fully or partially subsidizing transit passes for their eligible employees.

Employers can administer the pre-tax commuter benefits program themselves or use a third-party administrator to oversee the program for them.

According to OLS, future rulemaking may impact these requirements, including how employers that provide a subsidy will satisfy the Ordinance's requirements.

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## ***Timing for Employee Elections***

Covered employers must offer pre-tax deductions to eligible employees **within 60 days** of their employment beginning. If an employee elects to exclude money from his or her taxable wages for commuter benefits, the employer must provide the payroll deduction within **30 days** of the employee's election.

## ***Poster Requirement***

As of Jan. 1, 2020, covered employers must display a notice of an employee's rights to commuter benefits under the Ordinance, in English and the primary languages of employees at the workplace. The OLS has indicated that it will provide a model poster for employers to use in late 2019. It is also likely that OLS will incorporate commuter benefits information into the existing [Labor Standards Workplace Poster](#) that it updates annually.

## ***Recordkeeping***

Covered employers are required to keep records that document compliance with the Ordinance, including written documentation of the employer's offer of pre-tax payroll deduction to individual employees. OLS strongly recommends that employers retain documentation of an employee's response to the offer, as it may be required to show the employer's compliance. Employers should maintain these records for **three years**.

## **ENFORCEMENT**

According to OLS, employers are expected to comply with the Ordinance voluntarily. Even after OLS enforcement begins on Jan. 1, 2021, OLS may provide a business with a 90-day voluntary "cure" period during which the employer has an opportunity to comply with the commuter benefits requirement. If the business complies with the Ordinance within the cure period, OLS will not pursue further investigation. Future regulations issued by OLS are expected to address enforcement procedures, including possible penalties for employer violations.