

## New Jersey Law Requires Employee Pre-Tax Transportation Fringe Benefit

Beginning no later than March 1, 2020, every employer in New Jersey that employs at least 20 employees (disregarding employees covered by a collective bargaining agreement (“union employees”)) shall be required to offer all of its employees (other than union employees) a “pre-tax transportation fringe benefit.” This new mandated transportation fringe benefit is likely intended to fill the gap left by the change enacted in the 2017 federal tax law that eliminated an employer’s federal tax deduction for the provision of a transportation fringe benefit. Such change in federal tax law may discourage employers from otherwise offering a tax-free transportation fringe benefit to their employees.

A pre-tax transportation fringe benefit is a benefit that allows an employee to reduce his or her pay on a pre-tax basis to pay for the cost of certain eligible transportation services, including transit passes, commuter highway vehicle travel (e.g., carpools, vanpools), ferries, bicycling, and parking at park and ride lots. The new law speaks broadly, in terms of eligible forms of commuting, as it covers travel between a person’s place of residence and place of employment, other than in a motor vehicle occupied by one person. Such pre-tax wage reduction amounts, up to certain IRS-prescribed monthly limits (\$265 per month in 2019 for commuting expenses via commuter highway vehicles and transit passes), will not be subject to federal income taxes for employees or applicable FICA taxes if the amounts are used to pay qualifying transportation costs.

If a covered employer fails to comply with the requirement to offer a pre-tax transportation fringe benefit and such violation is not cured within 90 days, a \$100-\$250 civil penalty is imposed. After such 90-day period, each additional 30-day period during which the violation continues will result in an additional penalty of \$250. In addition, it appears that, due to changes made by the 2017 federal tax law, a New Jersey tax-exempt employer that is subject to the new transportation fringe benefit requirement will need to recognize, as unrelated business taxable income for federal tax purposes, the value of the pre-tax transportation fringe benefit provided to its employees each year. This could be an unexpected hidden cost for New Jersey tax-exempt employers in complying with the new transportation fringe benefit requirement.

The New Jersey Department of Labor and Workforce Development is expected to adopt rules and regulations concerning the administration and enforcement of the new employee pre-tax transportation fringe benefit.