

## District of Columbia Commuter Benefits: New Penalties, Fines

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Penalties and fines for non-compliance with Washington, D.C.'s law requiring D.C. employers to offer commuter benefits to their D.C. employees will take effect beginning on November 14, 2019.

The law, which became effective on January 1, 2016, requires employers with at least 20 employees in D.C. to offer commuter benefits to their covered employees. An employee is covered by the law if the employee:

1. Spends at least 50 percent of his or her working time in D.C.; or
2. Is based in the District of Columbia and performs a substantial amount of work in D.C. and less than 50 percent in any other state.

This law is similar to the requirements that are in place in [New Jersey](#), [New York City](#), and [San Francisco](#).

Under the law and [final rules](#) that were issued on August 16, covered employers must provide covered employees with at least one of the following three types of commuter benefits:

- *An employee-paid pre-tax benefit.* This allows employees to elect to set aside up to \$265 from their paycheck each month in 2019 for transportation in a commuter highway vehicle, a transit pass, or, beginning in 2026, commuter bicycling costs. This comes at little cost to the employer — only the administrative costs associated with setting up and maintaining the benefit.
- *An employer-paid direct benefit.* The employer, at the employee's election, may supply a transit pass or may reimburse the employee for vanpool costs. (The final rules list reimbursement of bicycling expenses as well; however, this may be an error given the tax treatment of such benefits until 2026, as described below.) An employer may provide this commuter benefit with passes, vouchers, SmarTrip® cards, or employee reimbursements. The value of this benefit can be up to \$265 per month in 2019.
- *An employer-provided transportation service at no cost to the employee, such as a shuttle, vanpool, or bus operated by or for the employer.* This is likely to be the most expensive and administratively intensive of all the commuter benefit options.

A D.C. employer that fails to offer at least one of the above options is subject to penalties and fines beginning on November 14, 2019. After that date, for each month that a covered employer is non-compliant, it may be fined \$100 per covered employee for the first offense, \$200 per covered employee for the second offense, \$400 per covered employee for the third offense, and \$800 per covered employee for any subsequent offenses.

Under the Tax Cuts and Jobs Act of 2018, employers may not deduct their expenses for providing tax-free commuter benefits.

The value of the commuter benefits is not includable in an employee's taxable income (*i.e.*, for purposes of federal and state payroll taxes), except for bicycle commuting reimbursements prior to 2026.

The final rules describe certain notice and information requirements. First, covered employers must notify covered employees of the available commuter benefits, and they must provide a contact for obtaining additional information about those benefits.

Second, covered employers must explain how to apply for and receive commuter benefits and how to submit a complaint to the D.C. Department of Employment Services. For these purposes, employers may make the notification using any commercially appropriate means, such as email (including

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internal documents like memos, newsletters, or bulletins) or conventional or electronic bulletin boards.

Third, covered employers must provide covered employees with “commuter benefits documents” as part of the employee benefits package or with the Notice of Hire form required under D.C. law. This likely includes a written description of the benefits available in an enrollment guide or similar, along with an enrollment form.

In order to meet these requirements, D.C. employers should memorialize in writing the commuter benefits they offer. Doing so also helps to ensure participant understanding and consistent administration. D.C. employers should keep records showing that they have complied with their obligations regarding commuter benefits for a minimum of three years.

Jackson Lewis attorneys are available to answer any questions and assist with this and any other workplace issues.

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