

Update - Philadelphia's New Commuter Transit Ordinance that Benefits Commuters

As anticipated, the Employee Commuter Transit Benefit Programs legislation passed by the Philadelphia City Council has been signed into law by Mayor Jim Kenney. This ordinance requires certain Philadelphia employers to provide a tax-advantaged commuter transit benefit program to their employees working in the City of Philadelphia.

The Philadelphia ordinance follows other large cities, which have previously adopted similar commuter benefit programs. Philadelphia City Council estimates that workers could save \$138 to \$540 per year by using the pre-tax benefit for transit passes while Employers would save on payroll taxes. The City would also benefit from increased ridership of public transportation. For many Employers, this type effort aligns with strategies they may already be deploying to help promote return to office/work efforts as well as alignment with overall Environmental, Social, Governance (ESG) initiatives.

What's in the ordinance?

The ordinance applies to Covered Employers which includes:

- an employer with fifty (50) or more "Covered Employees" who are defined as any employee who worked an average of at least thirty (30) hours per week "within the geographic boundaries of Philadelphia for the same employer within the previous twelve months"; and
- regardless of where the company is headquartered, even if some employees work outside of the city. As long as there are 50 or more Covered Employees in the city, the requirements will apply.

Government employers are excluded.

What needs to be offered?

Covered Employers need to make at least one of the following **commuter transit benefit programs** available to their Covered Employees:

- A. Ability to make a pre-tax payroll deduction for Mass Transit Expense or Qualified Bicycle Expenses as allowed under the Internal Revenue Code (IRC) at benefit levels at least equal to the maximum amount that may be deducted for such program pursuant to the IRC, as amended from time to time. These include –
 - o Fare Instruments such as public transit passes, fare cards or tokens used for transportation on a public transit,
 - o Transportation in a Commuter Highway Vehicle expenses if such transportation is in connect with travel between an employee's residence and workplace, and
 - o Qualified Bicycle Expenses incurred by a Covered Employee who regularly uses a bicycle for commuting to and from work. Eligible expenses may include the purchase, maintenance, repair and storage expenses related to bicycle commuting.
- B. An employer-paid benefit that provides the employee with a Fare Instrument used for a Covered Employee's Mass Transit Expense; or
- C. Any combination of A and B.

Note that the mandated \$20 per month Qualified Benefit Expense alternative option which was previously proposed in the bill has been removed from the signed ordinance.

Unknown – Impact to New Hires

The question remains that because the ordinance states that Covered Employers must make the Employee Commuter Transit Benefit Programs available to all of its “Covered Employees” who are defined as those employees who worked 30+ hours per week in the prior 12 months, does it mean employers are not required to provide this to new hires? From an administration practice, and as an employer recruitment and retention tool, employers may want to consider offering the Option A at a minimum to all employees based on their eligibility status for their standard benefit coverages. This way the employer is not required to track and communicate the 12-month waiting period separately. Employers should work with their counsel to determine their approach.

An additional unknown is the bicycle reimbursement incentive. The Tax Cuts and Jobs Act passed in December 2017 removed the qualified bicycle commuting reimbursements from the definition of “qualified transportation fringe” for plan years beginning after 2018 and before 2026, so they’re taxable on the federal level during this 8-year period. So, any reimbursements for bicycle transportation need to be taxable on the local level if the local law is relying on the current federal tax approach to this reimbursement. More guidance will be needed from the City of Philadelphia for this required reimbursement.

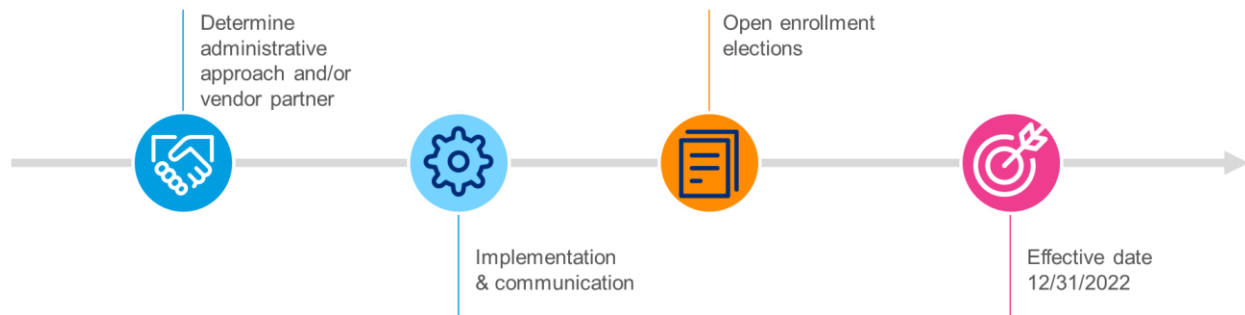
When does it take effect?

December 31, 2022.

What do employers need to do?

Although the ordinance takes effect a little under 5 months from now, employers need to begin preparing in order to comply with the effective date.

Employers should determine their preferred administrative approach and vendor to support. Time will be needed for implementation and development of employee communication of this new benefit program. All of that needs to be done before open enrollment and finalized before the effective date of 12/31/2022.



How can we help?

Employers should determine their individual obligations and strategy for compliance. Marsh McLennan Agency offers Benefit E-ssentials spending accounts including Commuter Benefits, Flexible Spending Accounts, Health Spending Accounts and Lifestyle Spending Accounts. Spending Account Administration costs are minimal, maintain employer compliance and help employees manage inflation, rising gas and commuting costs as more Employers look to return employees to the workplace. Your MMA Account Manager can work with the Benefit E-ssentials team to get a proposal for Commuter Benefit services if not already offered today.