

San Francisco Bay area employers required to provide commuter benefits

The Metropolitan Transportation Commission and the Bay Area Air Quality Management District jointly launched the Bay Area Commuter Benefits Program to reduce greenhouse gas emissions and traffic congestion by encouraging employees to commute by means other than driving alone. The pilot program extends through December 2016 and requires employers with 50 or more full-time employees in the San Francisco Bay area to offer commuter benefits to their employees by September 30, 2014.

Background

Since 2009, the cities of Berkeley, Richmond, and San Francisco (see our [September 3, 2008 For Your Information](#)) and the San Francisco International Airport have required employers within their jurisdictions to provide commuter benefits to their employees with the purpose of encouraging employees use public transit or carpool to work. These ordinances provided the model for the [Bay Area Commuter Benefits Program](#), which will require certain employers in the San Francisco Bay area to provide commuter benefits to employees. [Senate Bill 1339](#), signed into law by California Governor Jerry Brown in September 2012, authorized the Metropolitan Transportation Commission and the Bay Area Air Quality Management District to implement the Bay Area Commuter Benefits Program.



New commuter benefits program

The Bay Area Commuter Benefits Program requires Bay area employers to offer commuter benefits to their employees by September 30, 2014. It is a pilot program that extends through 2016.

Employers subject to the program

The Bay Area Commuter Benefits Program applies to public, private and non-profit entities with at least 50 full-time employees (excluding seasonal and temporary employees) in the San Francisco Bay area, which includes the nine counties surrounding San Francisco Bay — Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, southern Sonoma, and southwestern Solano counties. A full-time employee is one who works an average of 30 or more hours per week in the Bay area.

Commuter benefits to be offered

Employees who work an average of 20 hours per week (excluding seasonal and temporary employees) must be offered one of four commuter benefit options:

- **Pre-tax benefit.** Allow employees to pay for their transit or vanpool expenses with pre-tax dollars, as permitted by federal law (for 2014, \$130/month).
- **Employer-provided subsidy.** Offer a transit or vanpool subsidy to reduce, or cover, employees' monthly transit or vanpool costs (up to a maximum of \$75/month).
- **Employer-provided transit.** Provide a low-cost or free shuttle, vanpool, or bus service operated by or for the employer.
- **Alternative commuter benefit.** Propose and seek approval of an alternative method (e.g., carpooling, bicycling, walking, compressed work week) that would be as effective as the other options in reducing single-occupant vehicle trips (and/or vehicle emissions).

Buck comment. Although employers must offer this benefit, the ordinance does not require employees to make use of the benefit.

Employers are not required to offer commuter benefits to temporary or seasonal employees. Temporary and seasonal employees are those who work for the employer 120 days or fewer within the calendar year.

Other requirements

Employers subject to the program should do the following by September 30, 2014:

- Select one of the four benefit options
- Complete an initial registration through the program at the Bay Area Commuter Benefits Program [website](#).
- Notify employees of the commuter benefit it will offer, explain how to take advantage of it, and provide a contact person within the company for more information
- Designate a commuter benefits coordinator who will implement the program and comply with program rules
- Update and verify registration on an annual basis

The employee notification is required:

- When the benefit is first made available
- At least once per year thereafter
- As part of the explanation of employee benefits for newly-hired employees

The Bay Area Commuter Benefits Program [website](#) includes an [Employer Guide](#), a set of [Frequently Asked Questions](#), an [employee fact sheet](#), and other information on the program.

Penalties for noncompliance

If an employer subject to the ordinance fails to implement one of the commuter benefit options, it may be subject to a civil penalty under the California air pollution control laws. Noncompliance can lead to penalties of up to \$1,000 per day.

Compliance with local ordinances

Several Bay area cities and the San Francisco International Airport already have commuter benefit programs in place. These programs served as a model for the Bay Area Commuter Benefits program. Although the benefits provided under these programs are very similar to the Bay area program, the thresholds for applicability are lower as shown below.

Jurisdiction	Number of employees	Employees entitled to benefit
Bay area	50 or more full-time employees in the Bay area	Employees who work at least 20 hours per week in Bay area (excludes temporary and seasonal employees)
Berkeley	10 or more full-time, part-time, or temporary employees nationwide	Employees who work at least 10 hours per week in Berkeley
Richmond	10 or more full time, part-time, or temporary employees nationwide	Employees who work at least 10 hours per week in Richmond
San Francisco	20 or more full-time, part-time, or temporary employees nationwide	Employees who work at least 10 hours per week in San Francisco
San Francisco International Airport	20 or more full-time, part-time, or temporary employees nationwide	San Francisco International Airport-based employees who work at least 10 hours per week (including contract employees)

Employers will not have to comply with both programs. Employers with fewer than 50 employees, but who meet the thresholds shown in the chart above, will continue to comply with their local ordinance. Employers with at least 50 full-time employees in the Bay area will now need to comply with the new Bay area program even if they have complied with a local ordinance in the past.

Buck comment. Employers complying with one of these local ordinances are likely already in compliance with the Bay area ordinance with respect to the benefits offered. Those employers, if subject to the Bay area ordinance, may not need to make a change to the benefits offered, but will need to register with that program.

In closing

Employers with employees in the San Francisco Bay area will need to determine if they are subject to these new requirements and take the needed steps to comply before September 30, 2014.

Authors

Kimberley P. Mitchell, JD
Richard Stover, FSA, MAAA

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