

New Illinois Commuter Benefit Requirement Will Have Certain Employers on the Move

Wesley Covert
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Effective January 1, 2024, Illinois “covered employers” will be required to provide “covered employees” the opportunity to pay for commuter passes on a pre-tax basis pursuant to the Transportation Benefits Program Act (the Act).

Which employers are considered “covered employers” under the Act?

A covered employer is any employer that directly or indirectly, or through an agent or any other person, employs or exercises control over wages, hours, or working conditions of an employee, and that:

1. Is located in: the City of Chicago and Cook County; Warren Township in Lake County; Grant Township in Lake County; Frankfort Township in Will County; Wheatland Township in Will County; Addison Township; Bloomingdale Township; York Township; Milton Township; Winfield Township; Downers Grove Township; Lisle Township; Naperville Township; Dundee Township; Elgin Township; St. Charles Township; Geneva Township; Batavia Township; Aurora Township; Zion Township; Benton Township; Waukegan Township; Avon Township; Libertyville Township; Shields Township; Vernon Township; West Deerfield Township; Deerfield Township; McHenry Township; Nunda Township; Algonquin Township; DuPage Township; Homer Township; Lockport Township; Plainfield Township; New Lenox Township; Joliet Township; or Troy Township; and

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Wesley H. Covert

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2. Employs 50 or more “covered employees” at an address in one of the above geographic locations that is no more than one mile away from a fixed route transit service.

Which employees are considered “covered employees” under the Act?

Employees who work on average at least thirty-five (35) hours per week will be eligible for the pre-tax commuter pass benefit. For newly hired employees, the benefit begins on the first full pay period after 120 days of employment.

What public transit benefit must be offered by covered employers?

The public transit benefit must allow eligible employees to elect pre-tax salary reductions to be used to reimburse transit pass expenses. A “transit pass” is any pass, token, fare card, voucher or similar item entitling a person to transportation on a public transportation system within the jurisdiction of the RTA or the Chicago Transit Authority. Employers are not required to make contributions for the new public transit benefit under the Act, but they may do so pursuant to federal law. Additionally, the new Illinois public transit benefit must satisfy the federal requirements for qualified transportation fringe benefits under Internal Revenue Code Section 132(f). This includes the monthly election limit which is \$300 per month in 2023 and subject to COLA increases each year. The limits for 2024 have not been released yet.

What are some compliance considerations for covered employers?

Covered employers that are subject to the Act must determine which employees are “covered employees” and eligible for the commuter benefit. Employers should also consider preparing election forms and compensation reduction agreements for their eligible employees to memorialize their elections. Employers should also consider whether they will create their own independent commuter benefit program to comply with the Act or utilize one of the programs offered by the CTA or the RTA.

If you have questions regarding implementing a compliant commuter-benefit program, please contact your servicing Laner Muchin Benefits attorney.