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Commuting and Retirement: New Benefits for New Jersey Employees and Payroll Deductions for Employers

In March 2019, New Jersey enacted two laws that provide substantial pre-tax transportation and retirement benefits to employees, and some administrative burdens to employers to ensure proper employee consent and payroll administration.

Pre-Tax Transportation Benefit

New legislation signed by Governor Phil Murphy on March 1 requires that New Jersey employers with 20 or more employees (not including employees subject to a collective bargaining agreement) provide the opportunity for employees to participate in a pre-tax transportation fringe benefit program. Currently, New Jersey is the only state to mandate such a law but a handful of US cities have similar laws such as NYC, San Francisco, and Washington, DC. Essentially, this means that employers will be required to deduct, on a pre-tax basis, specified amounts from employee paychecks to cover the cost of transportation to and from work. The pre-tax transportation fringe benefit program excludes travel by an employee's own personal vehicle. This money can be used for travel expenses such as mass transit ticket options and to pay for parking at a park-and-ride facility. An additional claimed benefit of this new law is that it will incentivize New Jersey commuters to use public transportation and decrease car traffic on New Jersey's busy highways and roads, easing congestion and air pollution. It is estimated that the savings for New Jersey commuters could amount to as much as $900 per year.

The act became effective on March 1, 2019, but employers are not required to offer the pre-tax deduction until the earlier of March 1, 2020, or until the rules and regulations regarding how the law will work are published by the New Jersey Department of Labor and Workforce Development. There are penalties associated with noncompliance ($100-$250 for the first violation), so employers should keep abreast of when this new law will go live and ensure that employees receive notice of this new benefit. Employers will also need to work with their payroll service providers to ensure that they are equipped to make the appropriate deductions from employees' pay to implement the new pre-tax transportation fringe benefit program.

State-Run Retirement Benefit Program

Governor Murphy also signed into law on March 28 a newly created state-run retirement program known as New Jersey Secure Choice Savings Program. This new law, as of 24 months after the effective date (March 28, 2019), requires that employers with 25 or more employees that have been in business for at least two years and that do not otherwise offer a 401(k) or other individual retirement account covered under Section 401 of the tax code make automatic payroll deductions of 3% on a pretax basis from employee salaries to fund a state-run individual retirement account program. This established 24-month "grace period" may be extended for an additional 12 months by the board established to administer the fund. Employers will need to be in compliance within nine months after the program opens for employee enrollment.

The purpose of the new law is to ensure that employees have the opportunity to save for retirement. Studies show that employees across the United States have largely not been effectively saving for retirement, and that when payroll deduction is readily available, they are more likely to take advantage of making these contributions on a pre-tax basis than if they had to set aside post-tax income themselves.

Employers can choose to handle the administration of the pre-tax deduction and contributions or contract with a third party such as a payroll provider or professional employer organization. For employers that employ individuals through a leasing company or similar arrangement, the employer (or client company) would be treated as the employing entity for purposes of calculating and deducting the required contributions.

While these laws present opportunities for employees to reduce their tax burden in relation to commuting costs and retirement, they also present some administrative burden for employers to ensure compliance. Although neither law is yet fully in place, employers must be prepared to adjust their payroll practices.

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