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RULE ADOPTIONS

Reporter

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Agency

LABOR AND WORKFORCE DEVELOPMENT > DIVISION OF WAGE AND HOUR COMPLIANCE

Administrative Code Citation

Adopted New Rules: N.J.A.C. 12:55-3

Text

Pre-Tax Transportation Fringe Benefit

Proposed: April 20, 2020, at 52 N.J.R. 863(a).

Adopted: July 17, 2020, by Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Filed: July 17, 2020, as R.2020 d.080, **without change**.

Authority: N.J.S.A. 27:26A-19.

Effective Date: August 17, 2020.

Expiration Date: March 13, 2021.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

The adopted new rules are subject to, but do not exceed, Federal standards. The requirements of the adopted new rules referring to a "pre-tax transportation fringe benefit" are the same as those imposed by 26 U.S.C. § 132(f), which makes reference to a "qualified transportation fringe." *Ibid*.

Full text of the adopted new rules follows:

SUBCHAPTER 3. PRE-TAX TRANSPORTATION FRINGE BENEFIT

12:55-3.1 Purpose and scope

(a) The purpose of this subchapter is to establish standards and procedures for affected employers to provide a pre-tax transportation fringe benefit to its employees, as required by P.L. 2019, c. 38.

(b) The provisions of this subchapter shall be applicable to all affected employers.

12:55-3.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means P.L. 2019, c. 38.

[page=1617] "Affected employer" means an "employer," as that term is defined at N.J.S.A. 43:21-19(h), provided that the employer employs 20 or more employees, whether employed in New Jersey or not, for each working day during each of 20 or more calendar workweeks in the then-current or immediately preceding calendar year.

"Cure period" means the 90-day period immediately following receipt by the employer of the notice under N.J.A.C. 12:55-3.7(b) indicating a finding of a first violation.

"Employee" means an individual who is in "employment," as that term is defined at N.J.S.A. 43:21-19(i). N.J.S.A. 43:21-19(i)(2) indicates that "employment" shall include an individual's entire service performed within, or both within and without, New Jersey if:

1. The service is localized in New Jersey; or

2. The service is not localized in any state but some of the service is performed in New Jersey and:

(i) The base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in New Jersey; or

(ii) The base of operations or place from which such service is directed and controlled is not in any state in which some part of the service is performed, but the individual's residence is in New Jersey. N.J.S.A. 43:21-19(i)(5) defines the phrase "localized in New Jersey."

"Pre-tax transportation fringe benefit" means a pre-tax election transportation fringe benefit that provides commuter highway vehicle and transit benefits, consistent with the provisions and limits of 26 U.S.C. § 132(f)(1) at the maximum benefit levels allowable under Federal law, to be deducted for those programs from an employee's gross income pursuant to 26 U.S.C. § 132(f)(2).

12:55-3.3 Pre-tax transportation fringe benefit requirement

(a) Except as set forth in (b) below, an affected employer shall offer to all of its employees the opportunity to utilize pre-tax earnings (gross income) to purchase a pre-tax transportation fringe benefit.

(b) An affected employer shall not be required to offer the opportunity to utilize pre-tax earnings (gross income) to purchase a pre-tax transportation fringe benefit under the following circumstances to an employee:

1. Who is covered by a collective bargaining agreement in effect on March 1, 2019, until the expiration of that collective bargaining agreement; or

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2. Of the Federal government, provided that the employee is eligible for a transit benefit through his or her employment with the Federal government that is equal to or greater than a pre-tax transportation fringe benefit.

12:55-3.4 Payroll deduction

An affected employer may use a payroll deduction as a means of providing a pre-tax transportation fringe benefit, provided that the payroll deduction has been authorized by the employee in writing or is included in a collective bargaining agreement.

12:55-3.5 Recordkeeping requirement

Each affected employer shall for six years retain records sufficient to demonstrate that each employee eligible for a pre-tax transportation fringe benefit under the Act and this subchapter was offered the opportunity to use pre-tax earnings (gross income) to purchase a pre-tax transportation fringe benefit.

12:55-3.6 Violations and penalties

(a) An affected employer found to be in violation of the Act or this subchapter, shall be assessed by the Commissioner an administrative penalty in the amounts that follow:

1. First violation--not less than \$ 100.00 and not more than \$ 250.00;
2. Second and subsequent violations -- \$ 250.00.

(b) An administrative penalty shall not be imposed on an affected employer for the first violation if the employer demonstrates to the satisfaction of the Department within the cure period that it is complying with the Act and this subchapter.

(c) An employer seeking to demonstrate that it is complying with the Act and this subchapter may do so by submitting the compliance form provided by the Department and available on the Department's website. The Department may require submission of additional information, including documentary evidence, reasonably necessary to prove that a first violation was cured within the cure period.

(d) After the cure period, each additional 30-day period in which an affected employer fails to offer a pre-tax fringe benefit shall constitute a subsequent violation.

(e) An administrative penalty shall not be imposed on any individual employer more than once in any 30-day period.

12:55-3.7 Hearings

(a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:55-3.6, the employer shall have the right to a hearing under (b) below.

(b) No administrative penalty shall be levied pursuant to this subchapter, unless the Commissioner provides the alleged violator with written notification of the violation and the amount of the penalty and an opportunity to request a formal hearing.

(c) A request for formal hearing under (b) above must be received by the Department within 15 business days following receipt of the notice.

(d) All hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

(e) All requests for hearings will be reviewed by the Division of Wage and Hour Compliance to determine if the dispute could be resolvable at an informal conference. If the review indicates that an informal settlement conference

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is warranted, such conference will be scheduled. If a settlement cannot be reached, the case will be forwarded to the Office of Administrative Law for a formal hearing.

(f) The Commissioner shall make the final decision of the Department.

(g) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

(h) Upon issuance of a final decision, the penalty imposed under this section may be recovered with costs and, if applicable, interest charges, in a summary proceeding pursuant to the Penalty Enforcement law, N.J.S.A. 2A:58-10 et seq.

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