

# BenAlert

**BENEFIT TRENDS AND LEGISLATIVE UPDATES**

DECEMBER 2008



Howitt Benefit Services is pleased to provide you with periodic updates on benefit trends and legislative updates. As part of our valuable services, we want to ensure that you are in compliance and well-informed of the ongoing changes in our industry.

## **In this BenAlert:**

- San Francisco Commuter Benefits: Sample Documents and Additional Discussion

## **San Francisco Commuter Benefits: Sample Documents and Additional Discussion**

On September 5, 2008, I published my Memorandum (2008-16) on the City and County of San Francisco's mandate requiring employers to make certain commuter transit benefits available. San Francisco employers with 20 or more employees working at least 10 hours per week (in or outside of San Francisco) must offer the benefit to its employees as of January 19, 2009. The purpose of this Memorandum is to provide additional information about this program and to provide two sample documents (for review by the employer's counsel) as tools for implementation of this program: a pre-tax program and an employer-paid program. These samples are issued subject to review by your client's counsel.

### **Update**

The City and County of San Francisco (The City) has developed a special website to assist employers ([http://www.sfenvironment.com/aboutus/air/commute/how\\_work.htm](http://www.sfenvironment.com/aboutus/air/commute/how_work.htm)) and a Commuter Benefit Hotline (415) 355-3727.

### **The Benefit**

1. **Benefit Options.** Employers subject to the Ordinance must offer one or more of the following options:
  - a. A pre-tax transit option
  - b. Employer-paid transit benefits
  - c. Employer-provided transit

- 2. The Pre-tax Option.** Pursuant to IRC Section 132(f), employers will allow employees to purchase transit passes or van pool expenses using pre-tax wages. Please refer to Attachment A for a sample document and election form.
- 3. Employer-paid Transit Benefits.** Employers may issue vouchers or reimburse employees for passes on any San Francisco Bay Area mass transit system or for monthly van pool expenses. Reimbursement must be no less than the cost of a San Francisco MUNI Fast Pass (currently \$45.00). Employers must retain complete records of all claims (and supporting proof) submitted for reimbursement.
- 4. Employer-provided Transit.** Some large employers currently offer free shuttle service on a company-paid bus or van between home and work. Employers who do so, will satisfy the new Commuter Transit Ordinance, without having to offer either of the other two options.

## Additional Comments

- 1. Maximum Transit Benefit.** The new San Francisco Commuter Benefit Ordinance website continues to refer to a maximum monthly benefit of \$115.00. As noted, the maximum benefit under the federal IRC Section 132(f) is \$120.00 for transit passes. It would appear that the employer may offer a benefit less than the maximum federal benefit. Since The City appears to only require a maximum benefit of \$115.00, the employer has the option of offering a benefit greater than \$115.00 but not more than the IRC Section 132(f) limit of \$120.00 currently. The employer can also offer commuter parking benefits pursuant to IRC Section 137(f).
- 2. Commuters by Bicycle.** Although federal law will soon allow employers to reimburse bicyclists up to \$20 per month when it is the cyclist's primary mode of transportation (effective January 1, 2009), San Francisco has yet to expand its Ordinance to include cyclists. We will keep you informed of developments.

## The Samples (for review by Client Counsel)

- 1. Attachment A** is a model document and salary reduction agreement/election form describing the pre-tax contribution approach. These forms will require the review of client counsel. The employer would process pre-tax elections no more frequently than monthly and would provide vouchers or passes up to \$115.00 per month and use pre-tax contributions to pay van pool expenses.
- 2. Attachment B** is a model document describing the employer-paid benefit (e.g. distribution of voucher or transit passes) and provide reimbursement for van pool expenses up to \$115.00 but not more than the 132(f) monthly maximum currently \$120.00. This document also will require the review of client counsel. Since this model does not require Program Participant elections, there is no salary reduction agreement.

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*Attachment A:  
Sample Pre-tax Plan*

**«EMPLOYER\_FULL\_NAME»**

**QUALIFIED TRANSPORTATION BENEFIT PROGRAM**

**Pursuant to  
City and County of San Francisco  
Commuter Benefit Ordinance**

**Effective January 19, 2009**

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## SECTION 1 – ESTABLISHMENT AND PURPOSE

### 1.1. Establishment and Purpose

«EMPLOYER\_FULL\_NAME» («EMPLOYER\_SHORT\_NAME») hereby establishes the «EMPLOYER\_FULL\_NAME» Qualified Transportation Benefit Program (Program) pursuant to Internal Revenue Code Section 132(f).

### 1.2. Effective Date

This Program shall take on January 19, 2009.

### 1.3. The Program

This Program is established for the purpose of complying with the transit benefit requirements of the San Francisco Commuter Benefit Ordinance as approved by the San Francisco Board of Supervisors and first signed into law August 22, 2008, as amended from time to time.

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## **SECTION 2 – ELIGIBILITY AND BENEFITS**

### **2.1. Eligible Employees**

Full time, part time, or temporary employees of a Covered Employer (even if they perform their duties outside of San Francisco). Employees do not include those individuals made available to work through temporary or staffing agencies. To qualify for benefits the employee must work at least ten hours in the prior calendar month for the same employer inside the City and County limits and qualify for California minimum wage.

### **2.2. Covered Employers**

Employers other than governmental entities, with an average of 20 or more employees, inside or outside the boundaries of the City and County of San Francisco.

### **2.3. Benefit Amount**

Up to \$115.00 per month but not less than the purchase price of a San Francisco MUNI Fast Pass (currently \$45.00) through pre-tax payroll deduction for the purchase of a transit pass or to pay for van pool expenses.

### **2.4. Qualifying Expense**

The cost of transit passes on certain forms of public transit including MUNI Fast Pass, BART, Caltrain, Golden Gate Transit, East Bay (AC Transit, WestCat, etc.), SamTrans, and Amtrak, or the cost for van pool expenses.

### **2.5. Qualified Transportation Fringe**

Transit pass or van pool expenses.

### **2.6. Transit Pass**

Pass, token, fare card, voucher or similar item used for travel by ferry, cable car, bus, light rail, or train. It does not include vehicular FasTrak devices. The term “transit pass” has the same meaning as it does under IRC Section 132(f).

### **2.7. Van Pool Expense**

Program participant's monthly expense using a commuter highway vehicle (80% of which is commuter mileage) capable of holding at least six adults (not including the driver). Again, the term, “van pool vehicle” has the same meaning as it does under IRC Section 132(f).

### **2.8. Exclusion**

This Program does not apply to vehicular FasTrak devices.

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## **SECTION 3 – PRE-TAX CONTRIBUTIONS**

### **3.1. Pre-tax Election**

Employees may elect, no more frequently than monthly, to reduce his/her salary pursuant to a Salary Reduction Agreement to be used for qualifying transit expenses.

### **3.2. Salary Reduction Agreement**

Salary Reduction Agreement is an agreement between the Eligible Employee and the employer under which the Eligible Employee elects to reduce his/her salary by the amount of the qualified transportation expenses incurred by the employee.

### **3.3. Maximum monthly election**

The amount of salary reduction may not exceed the combined applicable statutory limits for Qualified Transportation Expenses as defined by this program and in combination with IRC section 132(f).

### **3.4. Timing of Elections**

The salary reduction election must be made before the employee is able currently to receive the cash or other taxable amount at the employee's discretion. The election must specify that the period (such as a calendar month) for which the Qualified Transportation Fringe will be provided must not begin before the election is made.

### **3.5. Revocability of Elections**

The employee may not revoke a salary reduction election after the employee is able currently to receive the cash or other taxable amount at the employee's discretion. In addition, the election may not be revoked after the beginning of the month for which the Qualified Transportation Fringe will be provided.

### **3.6. Refundability**

Salary reduction amounts are not refundable in cash or any other form of payment other than by payment of a qualifying expense.

### **3.7. Carry Over**

Salary reduction amounts, if unused, may be carried over to subsequent periods of coverage.

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## SECTION 4 – GENERAL PROVISIONS

### 4.1. Amendment and Termination

«EMPLOYER\_FULL\_NAME» intends to maintain the Program indefinitely, but is under no obligation to continue the Program and can terminate it without liability by providing written notice to all Eligible Employees. In terminating or amending the Program, «EMPLOYER\_FULL\_NAME» cannot retroactively reduce the benefits to which an employee is entitled prior to the termination or amendment.

### 4.2. Expenses

All costs and expenses incurred in administering the Program and other administrative expenses shall be paid by «EMPLOYER\_FULL\_NAME».

### 4.3. Non-Assignability

It is a condition of the Program, and all rights of each person eligible to receive benefits under the Program shall be subject thereto, that no right or interest of any such person in the Program shall be assignable or transferable in whole or in part, either directly or by operation of law or otherwise, including, but not by way of limitation, execution, levy, garnished, attachment, pledge, or bankruptcy, but excluding devolution by death or mental incompetence, and no right or interest of any such person in the Program shall be liable from, or subject to, any obligation or liability of such person, including claims for alimony or the support of any spouse.

### 4.4. Employment Non-contractual

The Program confers no right upon any employee to continue in employment.

### 4.5. Reimbursements Solely from General Assets

The reimbursements required hereunder will be paid solely from the general assets of «EMPLOYER\_SHORT\_NAME». Nothing herein will be construed to require «EMPLOYER\_SHORT\_NAME» or the Administrator to maintain any fund or segregate any amount for the benefit of any Eligible Employee, and no Eligible Employee or any other person shall have any claims against, right to, or security or other interest in, any fund, account or asset of «EMPLOYER\_SHORT\_NAME» from which any payment under the Program may be made.

### 4.6. No Guarantee of Tax Consequences

«EMPLOYER\_SHORT\_NAME» makes no commitment or guarantee that any amounts paid to or for the benefit of an Eligible Employee under the Program will be excludable from the Eligible Employee's gross income for federal or state tax nor that any other favorable tax treatment will apply to or be available to any Eligible Employee with respect to such amounts. It shall be the obligation of each Eligible Employee to determine whether each payment under this Program is excludable from the Eligible Employee's gross income for federal and state tax purposes, and to notify the Administrator if the Eligible Employee has reason to believe that any such payment is not so excludable.

### 4.7. Indemnification of «EMPLOYER\_SHORT\_NAME» by Participants

If any Eligible Employee receives one or more payments or reimbursements under the Program that are not for a qualified transportation expense, such Eligible Employee shall indemnify and reimburse «EMPLOYER\_SHORT\_NAME» for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax that the Eligible Employee would have owed if the payments or reimbursements had been made to the Eligible Employee as regular cash compensation, plus the

Eligible Employee's share of any Social Security tax that would have been paid on such compensation, less any additional income and Social Security tax actually paid by the Eligible Employee.

**Attachment A**

*(Pre-tax Plan)*

**«EMPLOYER\_FULL\_NAME»**

**Qualified Transportation Benefit Program**

**Salary Reduction Agreement and Election Form**

- 1. **Effective Date:** \_\_\_\_\_
- 2. **Authorization and Election.** I hereby authorize «EMPLOYER\_FULL\_NAME» to reduce my regular compensation in the amount to fund the qualified transit passes and van pool expenses as defined under IRC Section 132 (f), as limited by the requirements of the City and County of San Francisco Commuter Benefit Ordinance:

	Monthly Election	Monthly Limits
Transit Pass	\$ _____	\$115.00

- 3. **Federal Tax Treatment.** I hereby understand that «EMPLOYER\_FULL\_NAME» will forego federal income tax, FICA and FUTA withholding on salary reduction amounts on the assumption that such amounts are to be paid for the reimbursement of Qualified Transportation Expenses pursuant to IRC Section 132 (f).
- 4. **Duration of Elections.** This election shall remain in effect until such time as I revoke it in writing or cease to be eligible for the Program.

**Program Participant**

**Employer**

**Employee Name:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

*Attachment B:  
Sample Employer-paid Plan*

**«EMPLOYER\_FULL\_NAME»**

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## SECTION 2 – ELIGIBILITY AND BENEFITS

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Full time, part time, or temporary employees of a Covered Employer (even if they perform their duties outside of San Francisco). Employees do not include those individuals made available to work through temporary or staffing agencies. To qualify for benefits the employee must work at least ten hours in the prior calendar month for the same employer inside the City and County limits and qualify for California minimum wage.

### 2.2. Covered Employers

Employers other than governmental entities, with an average of 20 or more employees, inside or outside the boundaries of the City and County of San Francisco.

### 2.3. Benefit

«EMPLOYER\_SHORT\_NAME» has the option of providing vouchers, transit passes or reimbursement for qualifying benefits.

### 2.4. Reimbursement Amount

Up to \$115.00 per month but not less than the purchase price of a San Francisco MUNI Fast Pass (currently \$45.00) for the purchase of a transit pass or to pay for van pool expenses.

### 2.5. Qualified Transportation Fringe

Transit pass or van pool expense.

### 2.6. Qualifying Benefit

The cost of transit passes on certain forms of public transit including MUNI Fast Pass, BART, Caltrain, Golden Gate Transit, East Bay (AC Transit, WestCat, etc.), SamTrans, and Amtrak, or the cost for van pool rides.

### 2.7. Exclusion

This program does not apply to vehicular FastTrak devices.

### 2.8. Transit Pass

Pass, token, fare card, voucher or similar item used for travel by ferry, cable car, bus, light rail, or train. It does not include vehicular FasTrak devices. The term, "transit pass" has the same meaning as it does under IRC Section 132(f).

### 2.9. Van Pool Expense

Program participant's monthly expense using a commuter highway vehicle (80% of which is commuter mileage) capable of holding at least six adults (not including the driver). The term, "van pool vehicle" has the same meaning as it does under IRC Section 132(f).

### 2.10. Exclusion

This Program does not apply to vehicular FasTrak devices.

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## SECTION 3 – REIMBURSEMENTS

### 3.1. Bona Fide Reimbursement Arrangement

«EMPLOYER\_SHORT\_NAME» shall maintain records demonstrating that its employees have provided proof of having incurred expenses for transit passes or for van pool expenses during the period in effect in an amount equal to the reimbursement requested.

### 3.2. Certification

Each request for reimbursement shall contain a certification that the transit pass was purchased and used for qualified transportation including the dates during which the transit pass was used.

### 3.3. Cash Reimbursements

Cash reimbursements shall be limited to van pool expenses or to circumstances where a voucher or similar item that may be exchanged only for a transit pass is not readily available for direct distribution by «EMPLOYER\_SHORT\_NAME» to the employee as defined by IRS regulations.

### 3.4. Termination of Employment

No requests for reimbursements are permitted under the Program once employment is terminated and final paycheck has been issued.

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## SECTION 4 – GENERAL PROVISIONS

### 4.1. Amendment and Termination

«EMPLOYER\_FULL\_NAME» intends to maintain the Program indefinitely, but is under no obligation to continue the Program and can terminate it without liability by providing written notice to all Eligible Employees. In terminating or amending the Program, «EMPLOYER\_FULL\_NAME» cannot retroactively reduce the benefits to which an employee is entitled prior to the termination or amendment.

### 4.2. Expenses

All costs and expenses incurred in administering the Program and other administrative expenses shall be paid by «EMPLOYER\_FULL\_NAME».

### 4.3. Non-Assignability

It is a condition of the Program, and all rights of each person eligible to receive benefits under the Program shall be subject thereto, that no right or interest of any such person in the Program shall be assignable or transferable in whole or in part, either directly or by operation of law or otherwise, including, but not by way of limitation, execution, levy, garnished, attachment, pledge, or bankruptcy, but excluding devolution by death or mental incompetence, and no right or interest of any such person in the Program shall be liable from, or subject to, any obligation or liability of such person, including claims for alimony or the support of any spouse.

### 4.4. Employment Non-contractual

The Program confers no right upon any employee to continue in employment.

### 4.5. Reimbursements Solely from General Assets

The reimbursements required hereunder will be paid solely from the general assets of «EMPLOYER\_SHORT\_NAME». Nothing herein will be construed to require «EMPLOYER\_SHORT\_NAME» or the Administrator to maintain any fund or segregate any amount for the benefit of any Eligible Employee, and no Eligible Employee or any other person shall have any claims against, right to, or security or other interest in, any fund, account or asset of «EMPLOYER\_SHORT\_NAME» from which any payment under the Program may be made.

### 4.6. No Guarantee of Tax Consequences

«EMPLOYER\_SHORT\_NAME» makes no commitment or guarantee that any amounts paid to or for the benefit of an Eligible Employee under the Program will be excludable from the Eligible Employee's gross income for federal or state tax nor that any other favorable tax treatment will apply to or be available to any Eligible Employee with respect to such amounts. It shall be the obligation of each Eligible Employee to determine whether each payment under this Program is excludable from the Eligible Employee's gross income for federal and state tax purposes, and to notify the Administrator if the Eligible Employee has reason to believe that any such payment is not so excludable.

### 4.7. Indemnification of Employer by Participants

If any Eligible Employee receives one or more payments or reimbursements under the Program that are not for a qualified transportation expense, such Eligible Employee shall indemnify and reimburse «EMPLOYER\_SHORT\_NAME» for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax that the Eligible Employee would have owed if the payments or reimbursements had been made to the Eligible Employee as regular cash compensation, plus the

Eligible Employee's share of any Social Security tax that would have been paid on such compensation, less any additional income and Social Security tax actually paid by the Eligible Employee.