

FLASHPOINTS (ARCHIVED 2023)

EMPLOYMENT & LABOR LAW FLASHPOINTS OCTOBER 2023

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Illinois Employers Required to Provide Transportation Benefits Starting in 2024

On July 28, 2023, Illinois Governor J.B. Pritzker signed into law [P.A. 103-291](#), also known as the Transport Benefits Program Act, 820 ILCS 63/1, *et seq.* Effective January 1, 2024, many employers will now be required to provide their employees with pretax transportation benefits to allow employees to use pretax dollars for the purchase of a transit pass, via payroll deduction, with the costs of such a purchase being excluded from an employee's taxable wages and compensation.

The Act specifically defines a "covered employer" as any employer in one of the following counties and townships:

Cook County

Warren Township in Lake County

Grant Township in Lake County

Frankfort Township in Will County

Wheatland Township in Will County

Addison Township

Bloomington 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

Troy Township

Employers located within any of the aforementioned counties or townships must also employ 50 or more covered employees in these geographic areas at an address located within one mile of fixed-route transit service in order to be subject to the Act's requirements. For purposes of the Act, a "covered employee" is defined as any person who performs an average of at least 35 hours of work per week for compensation on a full-time basis.

Covered employers will be required to provide covered employees with a pretax commuter benefit that allows employees to use pretax benefits to purchase a transit pass via payroll deduction. The Act defines a "transit pass" as "any pass, token, fare card, voucher, or similar item entitling a person to transportation on public transit." 820 ILCS 63/5. The Act further defines "public transit" as "any transportation system within the authority and jurisdiction of the Regional Transportation Authority." *Id.* An employee's costs for the purchase of a transit pass may be excluded from their taxable wages and compensation up to the maximum amount permitted by federal tax law (*i.e.*, Internal Revenue Code §132(f)). This commuter benefit must be offered to all employees starting on the employees' first full pay period after 120 days of employment. The Act specifies that a covered employer is in compliance with the Act's requirements if it participates in a program offered by the Chicago Transit Authority or the Regional Transportation Authority.

With respect to those employers with unionized workforces, the Act provides that its requirements are not deemed to affect the validity or change the terms of bona fide collective-bargaining agreements in force on January 1, 2024. Further, after the January 1, 2024, effective date, the requirements of the Act may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in the agreement in “clear and unambiguous terms.” 820 ILCS 63/20.

While the Act does not require employers to make any contributions to an employee’s transportation benefits plan, offering a pretax commuter benefit option will be a significant change for some employers. As such, covered employers that do not currently provide a pretax commuter benefit program for its employees should immediately begin a review of available options in preparation for the Act’s January 1, 2024, effective date.

For more information about employment and labor law, see CONDUCTING THE EMPLOYMENT PRACTICES AUDIT (IICLE®, 2023). Online Library subscribers can view it for free by clicking [here](#). If you don’t currently subscribe to the Online Library, visit www.iicle.com/subscriptions.

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