

**Resolution 04-05-2009**

Labor: Employee Commuter Benefits

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Labor Code section 273, and amend Revenue and Taxation Code section 17149 to read as follows:

1 §273

2 (a) Definitions

3 Whenever used in this Section, the following terms shall have the meanings set forth  
4 below.

5 (1) "Covered Employee" shall mean any person who performs an average of at  
6 least (10) hours of work per week for compensation within the state of California for the  
7 same employer within the previous calendar month.

8 (2) "Covered Employer" shall mean an employer for which an average of twenty  
9 (20) or more persons per week perform work for compensation, and includes the state,  
10 political subdivisions of the state, and municipalities.

11 (3) "Transit Pass" shall mean any pass, token, fare card, voucher or similar item  
12 entitling a person to transportation on public transit within the meaning of 26 U.S.C.  
13 §132(f)(5)(A), as the federal law may be amended from time to time, including but not  
14 limited to, travel by ferry, bus, trolley, streetcar, light rail or train.

15 (4) "Transportation benefit Program" shall mean the program set forth in 273(b)-  
16 (d).

17 (5) "Vanpool" shall mean a 'commuter highway vehicle' within the meaning of 26  
18 U.S.C. §132(f)(5)(B), as the federal law may be amended from time to time, which currently  
19 means any highway vehicle:

20 (A) the seating capacity of which is a least 6 adults (not including the driver) and

21 (B) at least 80% of the mileage of which can reasonable be expected to be (i) for  
22 the purpose of transporting employees in connection with travel between their residences and  
23 their place of employment; and (ii) on trips during which the number of employees  
24 transported for such purposes is at least ½ of the seating capacity of such vehicle (not  
25 including the driver).

26 (b) Transportation Benefits Program

27 All Covered Employers shall provide at least one of the following transportation  
28 benefit programs to Covered Employees:

29 (1) A Pre-Tax Election: A program, consistent with 26 U.S.C. §132(f), allowing  
30 employees to elect to exclude from taxable wages and compensation, employee commuting  
31 costs incurred for Transit Passes or Vanpool charges (but not for parking), up to maximum  
32 level allowed by federal tax law, 26 U.S.C. §132(f)(2), which is one hundred and twenty  
33 dollars per month (\$120) in 2009;

34 (2) Employer Paid Benefit: A program whereby the employer supplies a Transit  
35 Pass for the public transit system requested by each Covered Employee or reimbursement for  
36 equivalent Vanpool charges, which shall not exceed \$45 per month in 2009 (the amount shall  
37 automatically increase annually by 3% rounded to the nearest dollar); or

38 (3) Employer Provided Transit: Transportation furnished by the employer at no  
39 cost to the Covered Employee in a Vanpool or bus, or similar multi-passenger vehicle  
40 operated by or for the employer.

41 (c) Administration and Enforcement

42 (1) The California Division of Labor Standards Enforcement shall promulgate  
43 rules and regulations to implement the Transportation Benefits Program. Such rules and  
44 regulations shall, to the extent consistent with this Section, conform to IRS regulations under  
45 26 U.S.C. §132(f).

46 (2) The California Division of Labor Standards Enforcement shall maintain an  
47 education and advice program to assist employers with meeting the requirements of the  
48 Transit Benefit Program.

49 (3) Any Covered Employer who fails to offer at least on transportation benefit  
50 programs to Covered Employees as required by 273(b) is liable for a civil penalty not  
51 exceeding \$100.00 for a first violation, (B) a fine not exceeding \$200.00 for a second  
52 violation within the same year, and (C) a fine not exceeding \$500.00 for each additional  
53 violation within the same year, which is payable to the California Division of Labor  
54 Standards Enforcement.

55 (4) The California Labor Commissioner or California Division of Labor  
56 Standards Enforcement, may issue administrative citations to any Covered Employer who  
57 fails to provide at least one transportation benefit programs to Covered employees as  
58 required by Section 273(b).

59 (5) The State may not recover both administrative and civil penalties for the same  
60 violation. Penalties collected under this Chapter, which may include recovery of  
61 enforcement costs, shall be used to fund implementation and enforcement of the  
62 Transportation Benefits Program.

63  
64 §17149

65 (a) Gross income does not include compensation or the fair market value of any other  
66 benefit, except salary or wages, received by an employee from an employer for participation  
67 in any ridesharing arrangement in California, including those specified in subdivision (b).

68 (b) For purposes of this section, compensation or the fair market value of any other  
69 benefit received for participation in a ridesharing arrangement in California includes  
70 compensation or other benefit received for:

71 (1) Commuting in a vanpool.

72 (2) Commuting in a private commuter bus or buspool.

73 (3) A transit pass for use by the employee or his or her dependents, other than transit  
74 passes for use by elementary and secondary school students who are dependents of the  
75 employee.

76 (4) Commuting in a subscription taxipool.

77 (5) Commuting in a carpool.

78 (6) Free or subsidized parking.

79 (7) An employee's bicycling to or from his or her place of employment.

80 (8) Commuting by ferry.

81 (9) The use of an alternative transportation method, other than a method otherwise  
82 specified in this subdivision, that reduces the use of a motor vehicle by a single occupant to  
83 travel to or from that individual's place of employment.

84 (10) Travel to or from a telecommuting facility.

85 (c) For purposes of this section:

86 ~~(1) "Vanpool" means seven or more persons commuting on a daily basis to and from~~  
87 ~~work by means of a vehicle with a seating arrangement designed to carry 7 to 15 adults,~~  
88 ~~including the driver, that is used to transport those persons who commute to and from work~~  
89 ~~on a regular basis.~~

90 (1) "Vanpool" shall mean a 'commuter highway vehicle' within the meaning of 26  
91 U.S.C. §132(f)(5)(B), as the federal law may be amended from time to time, which currently  
92 means any highway vehicle:

93 (A) the seating capacity of which is a least 6 adults (not including the driver) and

94 (B) at least 80% of the mileage of which can reasonable be expected to be (i) for  
95 the purpose of transporting employees in connection with travel between their residences and  
96 their place of employment; and (ii) on trips during which the number of employees  
97 transported for such purposes is at least ½ of the seating capacity of such vehicle (not  
98 including the driver).

99 ~~(2) "Transit pass" means any purchase of transit rides that entitles the holder to any~~  
100 ~~number of transit rides to and from the workplace, whether at a discount rate or the base fare~~  
101 ~~rate.~~

102 ~~(3) "Transit" means transportation service for use by the general public that utilizes~~  
103 ~~buses, railcars, or ferries with a seating capacity of 16 or more persons.~~

104 (2) "Transit Pass" shall mean any pass, token, fare card, voucher or similar item  
105 entitling a person to transportation on public transit within the meaning of 26 U.S.C.  
106 §132(f)(5)(A), as the Federal law may be amended from time to time, including but not  
107 limited to, travel by ferry, bus, trolley, streetcar, light rail or train.

108 ~~(4) (3) "Subscription taxipool" means a type of service in which employers or groups~~  
109 ~~of employees contract with a public or private taxi operator to provide daily commuter~~  
110 ~~service for a group of preassembled subscribers on a prepaid or daily fare basis following a~~  
111 ~~relatively fixed route and schedule tailored to meet the needs of the subscribers.~~

112 ~~(5) (4) "Ridesharing arrangement" means the transportation of persons in a motor~~  
113 ~~vehicle where that transportation is incidental to another purpose of the driver. The term~~  
114 ~~includes ridesharing arrangements known as carpools, vanpools, and buspools.~~

115 ~~(6) (5) "Carpool" means two or more persons commuting on a daily basis to and from~~  
116 ~~work by means of a vehicle with a seating arrangement designed to carry less than seven~~  
117 ~~adults, including the driver.~~

118 ~~(7) (6) "Buspool" means 16 or more persons commuting on a daily basis to and from~~  
119 ~~work by means of a vehicle with a seating arrangement designed to carry more than 15 adult~~  
120 ~~passengers.~~

121 ~~(8) (7) "Private commuter bus" means a highway vehicle which meets all of the~~  
122 ~~following criteria:~~

123 (A) Has a seating capacity of at least seven adults, including the driver.

124 (B) At least 50 percent of the mileage of which can be reasonably expected to be used  
125 for the purpose of transporting employees to and from work.

126 (C) Is acquired by the taxpayer on or after the date of enactment of this section.

127 (D) With respect to which the taxpayer makes an election under this paragraph on his  
128 or her return for the taxable year in which the vehicle is placed in service.

129           ~~(9)~~ (8) "Free or subsidized parking" means the benefit received from an employer for  
130 parking while participating in a ridesharing arrangement within California.  
131           ~~(10)~~ (9) "Alternative commute program" means any alternative transportation method  
132 or program the purpose of which is to reduce the use of a motor vehicle by a single occupant  
133 to travel to and from that individual's place of employment.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of San Francisco

**STATEMENT OF REASONS:**

Existing Law: Existing federal law allows employers to establish Qualified Transportation Fringe Benefits (QTFB) deduction program under 26 U.S.C. Section 132(f), allows employers to establish to use up to \$120 a month in pretax wages to purchase transit passes, vanpool rides, or qualified parking. California law (Revenue and Taxation Code section 17149) also excludes from gross income compensation or the fair market value of any other benefit, except salary or wages, received by an employee from an employer for participation in any ridesharing arrangement in California.

This Resolution: Requires employers with an average of twenty (20) or more persons per week who perform work for compensation, the state, its political subdivisions, and municipalities to offers its California employees who work at least 10 hours a week the opportunity to participate in a Transportation Benefits Program. Covered employers must offer one of the following options:

1. Pre-tax Transit: Employer sets up a deduction program under existing federal law (26 U.S.C. section 132(f)), which allows employees to use up to \$120 per month in pretax wages to purchase transit passes or vanpool rides.
2. Employer Paid Transit Benefits: Employer pays for workers' transit fares on any of the mass transit systems or reimburses workers for their vanpool expenses, in an amount not to exceed \$45 per month.
3. Employer Provided Transit: Employer offers workers free shuttle service on a company-funded bus or van between home and place of business.

The resolution also makes conforming changes to the California Tax and Revenue Code 17149 regarding the definitions of transit pass and vanpool.

The resolution is based on the San Francisco Commuter Benefits Ordinance.

The Problem: Although federal law allows employers to voluntarily establish a Qualified Transportation Fringe Benefits deduction program so employees may use up to \$120 a month in pretax wages to purchase transit passes or vanpool rides, it is not mandatory to do so. In order to relieve traffic congestion and reduce air pollution in California, it is important to make such transportation benefits programs mandatory. Under this transportation benefits program,

employers can save up to 9% on payroll taxes and employees save up to 40% on their transit costs for commuting using mass transit or vanpools.

**IMPACT STATEMENT**

This resolution does not affect any other law, statute or rule.

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