



## Commuter Benefits Ordinance Questions and Answers

The **Seattle Commuter Benefits Ordinance** became effective on January 1, 2020. Businesses with 20 or more employees must allow covered employees to make a monthly pre-tax payroll deduction for transit or vanpool expenses. An employer may instead offer a partially or wholly employer-paid transit pass to satisfy its obligations under this law. The law encourages commuters to use transit or vanpool to reduce traffic congestion and carbon emissions. Because the deduction is pre-tax, the law has the added benefit of lowering costs for both workers and businesses.

The **Seattle Office of Labor Standards (OLS)** is responsible for implementing this law. OLS partners with the Seattle Department of Transportation, Commute Seattle, and other community partners to equip workers and businesses with the information and tools to understand these requirements.

If you have additional questions, visit the [Office of Labor Standards website](#). You may also call 206-256-5297 or reach us electronically:

- Employees – submit an [online inquiry form](#).
- Employers – send an email to [business.laborstandards@seattle.gov](mailto:business.laborstandards@seattle.gov) or submit an [online inquiry form](#).

If you are an employer with a question about how to create a commuter benefits program, contact Commute Seattle, a community partner contracted by the Seattle Department of Transportation, by visiting the [Commute Seattle web site](#), by calling 206-613-3233, or by emailing [Pre-Tax@commuteseattle.com](mailto:Pre-Tax@commuteseattle.com).

*Note: Information provided by the Office of Labor Standards, Commute Seattle, or the Seattle Department of Transportation does not constitute legal advice, create an agency decision, or establish an attorney-client relationship with the recipient of the information.*

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# A. Basic Information

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## 1. What does this ordinance do?

This ordinance requires employers with 20 or more employees (worldwide) to allow an employee to make a monthly pre-tax payroll deduction for transit or vanpool expenses. The ordinance encourages employees to take transit or vanpool to work, which reduces traffic congestion and carbon emissions. It also may result in tax savings for both workers and businesses. This law has been in effect since January 1, 2020.

## 2. Where can I read the ordinance's language?

You can find the ordinance in the [City of Seattle's Municipal Code](#).

## 3. What are pre-tax election commuter benefits?

Under this law, "pre-tax election commuter benefits" are monthly payroll deductions that are made before taxes to cover transit and vanpool expenses. The Internal Revenue Code (Section 132(f)) refers to this benefit as "qualified transportation fringe" benefits.

Employers can administer a program themselves by working with King County Metro or use a third-party benefits administrator to oversee a program for them. An employer may instead offer a partially or wholly employer-paid transit pass to satisfy the law. More information about the options available to employers can be found under "Administering Commuter Benefits" on page 5.

*Note: While the Internal Revenue Code also allows pre-tax deductions for parking expenses, this ordinance does not require a business to offer pre-tax deductions for parking.*

## 4. What City department implements this ordinance?

The City of Seattle's Office of Labor Standards (OLS) implements this ordinance. OLS provides a range of services for workers and hiring entities, including education, training, compliance assistance, intake, and investigations.

## 5. How will OLS enforce this ordinance?

The ordinance is designed with voluntary compliance in mind. OLS may provide a business with a 90-day voluntary "cure" period during which an employer has an opportunity to achieve compliance. In that event, OLS will not pursue further investigation if the business complies with the ordinance.

## 6. Where can employers find more information about the ordinance?

For information about ordinance requirements, visit the [Office of Labor Standards' web site](#) or by calling our office at 206-256-5297. Employers can also submit a question by email to [business.laborstandards@seattle.gov](mailto:business.laborstandards@seattle.gov) or by submitting an [inquiry online](#).

For information on creating a commuter benefits program, contact Commute Seattle, a community partner contracted by the Seattle Department of Transportation, by visiting the [Commute Seattle web site](#), by calling 206-613-3233, or by emailing [Pre-Tax@commuteseattle.com](mailto:Pre-Tax@commuteseattle.com).

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## **7. What happens when an employer contacts OLS with a question about compliance?**

OLS has staff dedicated to business engagement who respond to inquiries and who are not members of the enforcement team. Phone conversations and email exchanges with the business engagement staff are kept separate from the investigation process. OLS encourages employers to contact us; our goal is help employers reach full compliance with Seattle's labor standards.

Note: The information provided by our engagement team is not intended to be and should not be construed as legal advice.

## **8. Where do workers call with questions?**

Workers can call 206-256-5297, email [workers.laborstandards@seattle.gov](mailto:workers.laborstandards@seattle.gov), or submit [an online inquiry](#). Upon request, and to the extent allowed by law, OLS protects the identifying information (e.g., name, job title) of workers who report violations and witnesses who provide information during investigations. OLS will not disclose the person's identifying information during and after the investigation, to the extent permitted by law. OLS may need to release names of workers who are owed payment because of an investigation.

## **9. Does a worker's immigration status impact coverage/application of the ordinance?**

No, immigration status does not impact coverage/application of the ordinance. As a matter of policy, the City of Seattle does not ask about the immigration status of anyone using City services. Read [OLS' Commitment to Immigrant and Refugee Communities](#) for more information.

## **10. How long does someone have to bring a complaint to OLS?**

After January 1, 2021, individuals have three years from the date of the alleged violation to file a complaint with OLS.

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## **B. Employers**

### **1. What businesses does this ordinance cover?**

Employers who employ 20 or more employees worldwide are required to provide commuter benefits. The ordinance does not apply to tax-exempt organizations and government agencies.

### **2. What businesses are exempt from this ordinance?**

The ordinance does not apply to employers with fewer than 20 employees worldwide. It also does not apply to tax-exempt organizations and government agencies.

### **3. What is a tax-exempt organization?**

A tax-exempt organization is one that is exempt from some federal income taxes. For more information about tax-exempt organizations, please visit the [Internal Revenue Service webpage](#). To find out if a certain business is tax-exempt, use the [IRS's tax-exempt organization search](#).

### **4. How does a business determine how many employees that they have?**

A business calculates the number of employees by counting the average number of employees who worked for compensation each calendar week during the prior calendar year. In doing so, businesses must remember to do the following:

- Count all employees worldwide;



- Count employees of all employment statuses (full-time, part-time, interns, seasonal, temporary, employees supplied by a placement agency, etc.); and,
  - Include any week during which at least one employee worked. *Employers should not include weeks where no employees worked.*
- 5. How do new businesses calculate the number of employees that they have?**  
 Employers with no employees during the previous calendar year count the average number of employees employed per calendar week during the first 90 calendar days that the employer engaged in business.
- 6. Does an employer have to comply if it undergoes a workforce reduction to fewer than 20 employees?**  
 No. If the average number of employees who worked for compensation each week in the *prior calendar year* does not meet 20, an employer is not required to provide commuter benefits to their employees beginning in the *new calendar year*. However, an employer is encouraged to continue doing so voluntarily.

## C. Employees

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- 1. Which employees does this ordinance cover?**  
 The ordinance applies to an employee if they worked at least an average of 10 hours per week in the previous calendar month.

- 2. How does an employer calculate the average number of hours per week in the previous calendar month?**

To calculate an employee's average weekly hours in the previous calendar month, determine the number of *complete seven-day workweeks* in that previous calendar month. The workweeks could be based on how an employer already defines their workweek to calculate overtime pay. This number will either be three or four workweeks, depending on the month. Determine the total number of hours worked for all complete seven-day workweeks during the previous calendar month and divide by the number of complete workweeks.

2020						
January						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

For example, if a business calculates its workweeks from Sunday to Saturday, then January 2020 had three complete workweeks. An employer would take the number of hours an employee worked from January 5<sup>th</sup> to January 24<sup>th</sup> and divide by three.

- 3. Must an employer offer the pre-tax deduction to employees who telecommute?**

Yes, if the employee works an average of ten or more hours per week in Seattle. The employee can choose not to make a payroll deduction if they do not have commuting expenses.

- 4. Does the ordinance apply to employees who live outside Seattle but commute to Seattle to work?**

Yes. The ordinance covers employees who work in Seattle. It does not matter where the employee lives.

- 5. Does the ordinance apply to employees who occasionally work in the City of Seattle?**

Yes, the ordinance may apply. If the employee worked an average of ten or more hours per complete workweek in the previous calendar month in Seattle, the ordinance applies.



**6. What if an employee qualifies one month, but not the next? Must an employer continue to offer the benefit if the employee falls out of coverage?**

If an employee falls out of coverage, the employer is not obligated to continue to offer the benefit.

However, the Ordinance does not prevent an employer from voluntarily continuing to offer the commuter benefit to their workers who fall out of coverage.

## D. Offering Commuter Benefits

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**1. What must an employer do?**

Covered employers can meet the law's requirements by offering one of the following to their employees:

- a) The ability to make a pre-tax deduction for transit or vanpool expenses up to the full amount allowed by federal law; or
- b) A transit pass that is fully or partially paid for by the employer.

*Please see questions under "Administering Commuter Benefits" for more details on these options.*

**2. When must an employer first offer the pre-tax deduction or transit pass to their employees?**

Employers must offer a commuter benefit to covered employees within 60 calendar days after beginning employment. The employer must then provide the benefit within 30 calendar days of the covered employee selecting the option.

If an employee is not initially covered by the law, but later comes into coverage by working more than an average of 10 hours a week in the previous calendar month, the employer must make an offer of the benefit to the newly covered worker at that time. The employer must then provide the benefit within 30 calendar days of the covered employee selecting the option.

**3. How should an employer make the offer of commuter benefits to their employees?**

An employer must make the offer of commuter benefits in writing. How an employer makes an offer is the employer's choice. For example, an employer may provide an offer letter as part of the employee handbook and/or orientation materials. Please note, an "offer" is something that is presented specifically to the employee for acceptance or rejection.

**4. Is an employee required to make a pre-tax deduction or take a transit pass?**

No. The ordinance does not require an employee to make a pre-tax deduction or accept a transit pass. Rather, the ordinance requires an employer to make a pre-tax deduction or transit pass available to the employee and the employee may choose whether to take advantage of the benefit.

**5. What if an employer offers a pre-tax deduction or transit pass, but no employee accepts that offer?**

If no covered employee accepts the initial offer of a commuter benefit, then the employer has no further obligation unless or until an employee elects a commuter benefit later.

**6. Can an employee "change their mind" after initially declining an offer of a commuter benefit?**

Yes, the ordinance requires an employer to make a pre-tax deduction or transit pass available to a covered employee and the employee may choose to take advantage of the benefit at any time. If the employee chooses to elect a commuter benefit later, and they remain covered under the ordinance, the employer must provide the benefit within 30 calendar days of the employee selecting the option.



- 7. After an employee elects to exclude money from their taxable wages, or accepts the employer's offer of a transit pass, how soon must an employer provide the commuter benefit?**  
The employer must provide the benefit within 30 calendar days of the employee selecting the option.

## E. Administering Commuter Benefits

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**1. How does an employer administer a pre-tax deduction fund for commuting expenses?**

An employer has a couple options in administering a pre-tax deduction fund for commuting expenses. The first involves partnering with a third-party benefits administrator that can provide a way for employees to directly access the funds to pay for their transit or vanpool costs (like a Flexible Spending Account debit card). The second method involves the employer working with King County Metro to facilitate using the deducted funds to contribute to the employee's ORCA e-purse account.

For more detailed assistance in setting up a pre-tax deduction program, you can contact Commute Seattle, a local nonprofit that works with businesses to implement commuter benefits. They will explain the range of options available. You can call them at 206-613-3233 or visit [the Commute Seattle website](#). You can also talk to King County Metro about how a worker's pre-tax funds can be used to load their ORCA card, through the "Business Choice" program. You can contact them at 206-477-3700.

**2. How much pre-tax money may an employee deduct from their wages?**

In 2022, the limit is \$280 per employee per month for transit (bus, light rail, ferry, and water taxi) and vanpool. Each year, the Internal Revenue Service will announce the new limit. OLS will update this document with future relevant amounts when available. Please also see [Internal Revenue Service Employer's Tax Guide to Fringe Benefits](#) for the current calendar year for more information.

**3. If an employer chooses to provide a subsidized transit pass instead of a pre-tax deduction, how much of a transit pass subsidy do they have to provide to meet the ordinance's requirements?**

An employer offering a subsidized transit pass instead of a pre-tax deduction to their employee must subsidize the pass with a monthly amount that is equal to or greater than 30% of a retail monthly transit pass covering the fares for King County Metro and Sound Transit Link Light Rail service. Please check these agencies websites or the most up-to-date fares.

**4. Does an employer that provides employees with an ORCA card through the Business Passport Program meet the law's requirements?**

Yes. An employer may satisfy the requirements of the Ordinance by offering a transit pass through the ORCA Business Passport Program, which requires an employer to pay for at least a 50% of a discounted annual transit pass. For more information, visit the [ORCA Business Passport Program website](#).

**5. Does an employer's participation in the ORCA Business Choice program meet this law's requirements?**

Participation in the ORCA Business Choice program allows for, but does not require, the employer to provide a transit subsidy. If an employer provides a subsidized transit pass through the ORCA Business Choice program, at the level described in Question E.3. above, they would meet the law's requirements.

If an employer does not intend to subsidize a pass provided through the ORCA Business Choice program, they must still create a pre-tax commuter benefit election, and can use employees' pre-tax funds to load their ORCA cards through the Business Choice program.



6. **Does an employer that reimburses employees for their commuting costs meet the law's requirements?**  
The ordinance requires that employers either provide a pre-tax election commuter benefit, or provide a "fully or partially subsidized, employer-provided, transit passes." As such, reimbursements for transit commuting costs do not fulfill the law's requirements. OLS encourages an employer who currently reimburses their worker's commuting costs to contact King County Metro at 206-477-3700 to determine if an ORCA business product may satisfy the law's requirements at a similar cost to the employer.

## F. Notice & Posting

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**1. What are the notice and posting requirements of the ordinance?**

As of January 1, 2020, covered employers must display a poster that gives notice of an employee's rights to exclude commuting costs incurred for transit or vanpool expenses from their taxable earnings. Employers must display the poster in English and in the primary languages of the employees at the workplace. OLS has incorporated information about the Commuter Benefits Ordinance into the existing Office of Labor Standards Workplace Poster.

**2. Where can I find a copy of the Office of Labor Standards Workplace Poster?**

You can find a copy of the Office of Labor Standards Workplace Poster online on our [website](#) or you can pick one up at our office. We are in downtown Seattle at 810 Third Avenue in Suite 375.

**3. What records must an employer keep?**

Employers are required to keep records that document compliance with the ordinance, including written documentation of the employer's offer of pre-tax deduction to individual employees. OLS strongly encourages employers to retain documentation of an employee's response to the offer as it may be required to show compliance. Employers must keep these records for three years.

## G. Protection from Retaliation

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**1. Does the ordinance prohibit retaliation?**

Yes. Retaliation is illegal. Employers may not take adverse actions or discriminate against employees who, in good faith, assert the rights given by this ordinance.

These rights include but are not limited to:

- a. Engaging in the protections afforded by this ordinance (for example, making a pre-tax deduction or requesting that an employer allow employees to make a pre-tax deduction);
- b. Asking questions about commuter benefits rights or the law;
- c. Talking to OLS or other coworkers about commuter benefits rights or the law;
- d. Filing a complaint about alleged violations; or
- e. Participating in an investigation of an alleged violation.

