



# Seattle Office of Labor Standards

## Questions & Answers

### Commuter Benefits Ordinance

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The **Seattle Commuter Benefits Ordinance** becomes effective on **January 1, 2020**. Businesses with 20 or more employees must allow a covered employee to make a monthly pre-tax payroll deduction for transit or vanpool expenses. The ordinance encourages commuters to use transit options other than single occupancy vehicles, thus reducing 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 Office of Labor Standards' enforcement begins January 1, 2021.

**The Seattle Office of Labor Standards (OLS)** is responsible for implementing the Commuter Benefits Ordinance. In 2019 and 2020, OLS will develop administrative rules and enforcement procedures. OLS will also team up with the Seattle Department of Transportation, Commute Seattle, and our community partners to equip workers and businesses, including our small business community, with the information and tools to understand these new requirements.

**OLS created this document to provide a preliminary explanation of the ordinance's requirements.** Our office may modify this information after issuing administrative rules.

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

- Employees with questions– submit an [online inquiry form](#).
- Employers with questions about ordinance requirements or rulemaking – 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 of 20 or more employees 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 results in tax savings for both workers and businesses.

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

You can find the ordinance on the [City of Seattle's Office of the City Clerk website](#).

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

Under this ordinance, "pre-tax election commuter benefits" are monthly payroll deductions before taxes to cover transit and vanpool expenses. An employer may also offer a partially or wholly employer-paid transit pass to satisfy its obligations under this ordinance. Employers can administer a program themselves or use a third party administrator to oversee a program for them. The Internal Revenue Code (Section 132(f)) refers to this benefit as "qualified transportation fringe" benefits.

*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. When do employers have to begin complying?

Businesses must comply with the ordinance beginning on January 1, 2020.

### 5. When does enforcement begin?

The Office of Labor Standards will accept complaints about alleged violations beginning on January 1, 2021.

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

For information about ordinance requirements and future rulemaking, visit the [Office of Labor Standards' web site](#) or by calling our office at 206-256-5297.

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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## B. Employers

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

Employers who employ 20 or more employees worldwide are required to provide commuter benefits (pre-tax deductions). 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, 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 that did not have any 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?**

Employees who work an average of ten hours or more per week in Seattle are entitled to this benefit.

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

Yes, but only if the employee works an average of ten or more hours per week in Seattle.

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

Yes, the ordinance may apply. If the employee works an average of ten or more hours per week in Seattle, the ordinance applies.

**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.



## D. Pre-Tax Deductions for Commuter Benefits

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### 1. What must an employer do?

Covered employers can meet their obligation under the ordinance by doing one of the following:

- Create a program that allows employees to make a pre-tax deduction for transit or vanpool expenses up to the full amount allowed by federal law; or
- Pay for the entire or part of an employee's transit pass.

*Note: Please check back with us in 2019 for more details. Future rulemaking will impact these requirements, including about how using an employer subsidy will satisfy the requirements.*

### 2. How much may an employee deduct from their wages?

In 2018, the limit is \$260 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 cap. OLS will update this document with future relevant amounts when available.

### 3. Is an employee required to make a pre-tax deduction?

No. The ordinance does not require an employee to make a pre-tax deduction. Rather, the ordinance requires an employer to make a pre-tax deduction available to the employee and the employee may choose (or not choose) to take advantage of it.

### 4. When must an employer first offer the pre-tax deduction to their employees?

Employers must offer pre-tax deductions to covered employees within 60 calendar days of the employee commencing employment.

### 5. After an employee elects to exclude money from their taxable wages, how soon must an employer provide the payroll deduction?

The employer must provide the deduction within 30 calendar days of the employee selecting the option.

## E. 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.

The Office of Labor Standards will create this poster and make it available to employers in late 2019. It is likely that OLS will incorporate commuter benefits information into the existing Labor Standards Workplace Poster that it updates annually.

### 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 located 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.

## F. 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 ordinance;
- c. Talking to the Office of Labor Standards or other coworkers about commuter benefits rights or the ordinance;
- d. Filing a complaint about alleged violations; or
- e. Participating in an investigation of an alleged violation.

## G. Office of Labor Standards

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### 1. When will OLS issue regulations (rules) for this ordinance?

The Office of Labor Standards will begin rule development in 2019, with the aim of completing the process before the ordinance goes into effect on January 1, 2020. Possible rule topics include definition of transit and vanpool expenses, enforcement procedures, amount of penalties and waiver of penalties by the Director, and early resolution via proof of compliance.

### 2. How will OLS enforce this ordinance?

The ordinance is designed with voluntary compliance in mind. Even after OLS enforcement begins on January 1, 2021, 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.

### 3. The ordinance goes into effect on January 1, 2020, but enforcement begins a year later. What does this mean?

The ordinance recognizes that businesses will need time to learn about and implement a commuter benefits (pre-tax deduction) program. Accordingly, the ordinance is not effective (i.e., when businesses are expected to comply) until January 1, 2020. **Employers are required to comply with the ordinance by January 1, 2020.** However, OLS does not begin enforcement for another year after that, i.e., beginning January 1, 2021.

### 4. What is the statute of limitations for bringing 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.

