



*Bay Area*  
**Commuter Benefits Program**

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**FREQUENTLY ASKED QUESTIONS**

March 26, 2014

The Bay Area Commuter Benefits Program is a partnership led by the Metropolitan Transportation Commission and the Bay Area Air Quality Management District. (March 2014)



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## FREQUENTLY ASKED QUESTIONS

### Program Overview and Requirements

#### **Q: What is the purpose of the Bay Area Commuter Benefits Program (Program)?**

A: The purpose of the Program is to improve air quality and reduce traffic congestion by promoting the use of alternative commute modes such as transit, ridesharing, bicycling, and walking. The Program will accomplish this by increasing the number of employers who provide commuter benefits to their employees.

#### **Q: Which employers are subject to the Program?**

A: The Program applies to all public, private and non-profit employers in the Bay Area with 50 or more full-time employees within the [geographic boundaries](#) of the Bay Area Air Quality Management District (Air District). The employee count is based on the total number of full-time employees (see [FAQ: How is the term "full-time employee" defined?](#)) at all Bay Area worksites combined.

#### **Q: Is the Program mandatory?**

A: Yes, the Program is mandatory for all public, private and non-profit employers in the Bay Area with 50 or more full-time employees within the geographic boundaries of the Air District.

#### **Q: What are the Program requirements?**

A: The Program requires employers with 50 or more full-time employees in the Bay Area to:

- Select one of the four commuter benefit options (see [FAQ: What are the Commuter Benefit Options?](#)),
- Designate a Commuter Benefits Coordinator,
- Register via the web-based registration system,
- Notify employees of the commuter benefit option selected and how to take advantage of the benefit,
- Update the employer registration form on an annual basis,

- Maintain records to document implementation of the commuter benefit, and
- Provide information requested by the Air District/MTC for Program evaluation purposes.

#### **Q: What are the commuter benefit options?**

A: An employer must choose one (or more) of the following commuter benefits to offer to their employees:

- **Option 1:** Allow employees to exclude their transit or vanpooling costs from taxable income, to the maximum allowed by federal law (currently \$130 per month);
- **Option 2:** Provide a transit or vanpool subsidy to cover or reduce employees' monthly transit/vanpool costs (up to \$75 per month);
- **Option 3:** Provide a low-cost or free shuttle, vanpool or bus service, operated by or for the employer; or
- **Option 4:** Provide an alternative commuter benefit that would be as effective as one of the other options in reducing drive-alone commuter trips (and/or vehicle emissions).

#### **Q: Our worksite is not located near transit - do we still have to comply with the requirements of the Program?**

A: Yes. The Program applies to any employer with 50 or more full-time employees throughout the jurisdiction of the Air District, regardless of its proximity to public transit. The Program provides employers with the flexibility to offer commuter benefits appropriate to the needs of their employees and worksites. Option 3 or Option 4 may be most appropriate for employers with worksites that are not well served by public transit. Option 4 allows an employer to comply by providing commuter benefits for alternative commute modes such as carpooling, bicycling, walking, telecommuting, and compressed work week schedules. For additional information on Option 4, [click here](#).

### **Q: Are there any penalties for employers who do not participate in the Program?**

A: The focus of the Program is to achieve voluntary compliance by employers by providing education and compliance assistance to employers. Free assistance is available to help employers comply with the Program. [Click here](#). However, all employers that are subject to the Program are required to participate. If an employer refuses to comply, then the Air District can impose a financial penalty as authorized by the California Health and Safety Code. The penalty for failure to comply would be determined on a case-by-case basis, based upon factors that the Air District is required to consider pursuant to the California Health and Safety Code.

### **Q: My company is already offering commuter benefits, do we need to do more?**

A: All employers need to comply with the requirements described in the response to [FAQ: What are the Program Requirements?](#). However, if your company already offers

a commuter benefit that is consistent with one of the four options described in [FAQ: What are the Commuter Benefit Options?](#), you will not need to do anything more from a substantive standpoint. You will only need to complete the online registration form and continue to make the commuter benefit(s) available to your employees.

### **Q: What are the reporting requirements?**

A: Employers are required to complete a [simple online registration](#) process specifying which commuter benefit the employer provides. Employers are required to update their registration form on an annual basis.

### **Q: What are the record-keeping requirements for the Program?**

A: The employer must maintain records, files, and documentation to establish compliance with the requirements of this Program, retain these records for a period of three years, and make them available to the Air District upon request.

## Key Definitions & Provisions

### **Q: How is the term “full-time employee” defined?**

A: For the purpose of the Program, an employee is defined as anyone who is treated as an employee for tax purposes, i.e., anyone who receives a W-2 form from the employer. A “full-time employee” is defined as an employee who has worked an average of at least 30 hours per week during the previous calendar month. Independent contractors would not be counted as employees.

### **Q: How do we count “full-time employees” for the purpose of determining whether our company is subject to the Program?**

A: Your employee count should be based on the average number of “full-time employees” (see [FAQ: How is the term “full-time employee” defined?](#)) in the Bay Area carried on your payroll over the course of the most recent three-month period. Seasonal or temporary employees who work less than 120 days per year are excluded.

### **Q: Which employees are entitled to commuter benefits?**

A: Employers must offer their commuter benefit to all “covered employees”. A covered employee is defined as an employee who worked an average of 20 or more hours per week within the previous calendar month. Seasonal or temporary employees who work less than 120 days per year are excluded.

### **Q: What if we offer a commuter benefit, but our employees choose not to take advantage of it?**

A: The Program does not require employees to take advantage of the commuter benefit or to change their commute mode. The Program only requires that employers offer and make available a commuter benefit to all “covered employees” (see [FAQ: Which employees are entitled to commuter benefits?](#)). If you make one of the commuter benefits available to your employees, you will be in compliance with Program requirements, regardless of how many employees choose to use the commuter benefit.

**Q: Do employers need to meet any numerical targets or standards?**

A: No, the Program does not require employers to attain any specific standards or targets.

### Savings & Costs

**Q: How much will the Program cost employers?**

A: The potential costs will depend upon which commuter benefit option the employer selects, and the number of employees who choose to utilize the benefit. Option 1, the pre-tax option, has the potential to save employers money by reducing their payroll taxes. In the case of Options 2, 3 and 4, the costs will depend upon the specific benefits that an employer offers pursuant to these options. For more discussion on the costs of each option, [see page 16 of the Bay Area Commuter Benefits Program - Staff Report](#) (January 2014).

Many Bay Area employers already offer commuter benefits, and currently meet the substantive requirements of the Program. These types of employers would incur minimal costs, if any, to register and provide basic information about their existing Program to the Air District/MTC.

**Q: Can the Program save money for my company?**

A: Employers may experience direct savings in response to the Program based on the commuter benefit provisions or other applicable provisions in the federal tax code. Employers offering Option 1 can allow their employees to

exclude their transit/vanpool commuting costs from their taxable wages. This saves the employer money because those transit/vanpool costs are also excluded from the employer's payroll taxes, thereby saving the employer 7.65% (or more) on every dollar set aside as pre-tax by employees for transit/vanpooling.

**Q: How will my employees benefit?**

A: The specific benefit to your employees will depend upon which commuter benefit option you provide. If you offer Option 1, then your employees who commute by transit or vanpool can save \$600 per year or more by excluding their transit or vanpool costs (up to \$130 per month) from taxable income. If you offer Option 2, 3 or 4, your employees will save money by paying for transit through a subsidy (Option 2), riding in a company vanpool or shuttle (Option 3), or some other means of commuting other than a single-occupancy vehicle (Option 4). In addition to saving money, employees who take advantage of a commuter benefit will free up time that would otherwise be spent behind the wheel. In addition to monetary savings, the Program may have other indirect benefits such as reduced commute stress from less driving.

### Multiple Worksites

**Q: What if we have more than one worksite in the Bay Area?**

A: The threshold of 50 or more full-time employees in the jurisdiction of the Air District (for determining applicability) is based on the total number of employees at all Bay Area worksites combined for each respective employer, regardless of how the employees are distributed among worksites. If you have more than 50 full-time employees at all your Bay Area worksites combined, then you need to provide commuter benefits at all the Bay Area worksites.

**Q: We have multiple worksites, can we offer different commuter benefits at the various worksites?**

A: Yes, as long as the commuter benefit offered at each worksite is consistent with Option 1, 2, 3, or 4 of the Program. The Air District and MTC encourage employers to offer commuter benefits that are appropriate for each worksite.

**Q: What if one (or all) of our worksites is located in a city with an existing commuter benefit ordinance act?**

A: Four local jurisdictions (the cities of Berkeley, Richmond, and San Francisco; and San Francisco International Airport) have adopted local commuter benefit ordinances. While the substantive requirements for these local ordinances are very similar to the requirements of this regional Program, the local ordinances have more stringent applicability thresholds (see table to the right). All employers that are subject to the regional Program by virtue of having 50 or more full-time employees in the Bay Area will report to the Air District/MTC. The Air District/MTC will share information with the local entities regarding the worksites within their respective jurisdictions that are subject to this Program. Smaller employers not subject to this Program should continue to work with the applicable entity according to their worksite location(s).

Jurisdiction	Applicability Threshold
City & County of San Francisco	20 or more employees nationwide
San Francisco International Airport	20 or more employees nationwide
City of Berkeley	10 or more employees nationwide
City of Richmond	10 or more employees nationwide

**General Questions about the Program**

**Q: Our company has less than 50 full-time employees, can we still participate in the Program?**

A: The Air District and MTC encourage smaller employers to offer commuter benefits consistent with the options described in above. The potential savings and positive outcomes of the Program are equally valid for smaller companies. However, employers with less than 50 full-time employees in the Bay Area are not required to register or report to the Air District/MTC.

**Q: At our company, employees benefits are subject to collective bargaining. How does this relate to the Program?**

A: The Program does not absolve an employer or other party from any obligation required by an existing collective bargaining agreement with employees.

**Q: My employer is certified by the “Best Workplaces for Commuters”. Are we therefore automatically in compliance with the Program?**

A: If your company holds a current certification from the [Best Workplaces for Commuters](#), then you should have no

trouble complying with the Program. However, you will need to complete the brief, online registration process and indicate which of the four commuter benefit options ([see FAQ: What are the Commuter Benefit Options?](#)) you are providing to your employees.

**Q: Can we offer more than one commuter benefit?**

A: You are only required to offer one of the four commuter benefits described in [FAQ: What are the Commuter Benefit Options?](#) to your employees. However, you may choose to provide additional commuter benefits to your employees, thus enhancing the potential effectiveness of your Program.

**Q: At the end of the pilot period on January 1, 2017, what will happen?**

A: What happens beyond the end of 2016 will depend upon whether the California State Legislature takes action to extend the Program. Employers will be notified at the appropriate time, based upon the outcome of the pilot period.

### Option 1

**Q: Is the pre-tax benefit similar to a flexible spending account for medical expenses, in the sense that if “you don’t use it, you lose it”?**

A: No. Under IRS Code Section 132(f), employees may carry over unused transit tickets purchased with pre-tax dollars to subsequent months, provided that the transit pass or ticket allows unused value to be carried forward.

### Option 2

**Q: How much is the required subsidy amount for Option 2?**

A: The subsidy must be equal to the employee’s monthly transit or vanpool fare, to a maximum of \$75 per month. (However, an employer can choose to provide a higher subsidy amount on a voluntary basis. The federal tax code currently allows an employer to provide a transit or vanpool subsidy of up to \$130 per month on a tax-free basis. If the employer provides a subsidy greater than \$130 per month, then the amount above \$130 would be subject to taxation).

**Q: If we offer a lower subsidy amount, will we still comply?**

A: If your company chooses to offer a lower amount (i.e., if the subsidy you provide is capped at less than \$75 per month), then you will not be able to comply via Option 2. However, you can comply by offering Option 1 in combination with a lesser subsidy. Alternatively, you could comply via Option 4 by offering the lower subsidy amount in combination with two additional secondary measures defined in the [Pre-Approved Alternative Benefit Options](#).

**Q: If we provide an annual transit pass (such as Santa Clara VTA’s EcoPass or AC Transit’s EasyPass) to all employees, does that qualify for the purpose of complying with the Program via Option 2?**

A: If your company provides a transit pass such as VTA’s EcoPass or AC Transit’s EasyPass, you would comply under Option 2.

*Note: If multiple transit agencies serve the worksite, employers who provide an EcoPass or EasyPass are encouraged to also provide a benefit (by means of either Option 1 or Option 2) to employees who commute using other transit providers.*

**Q: Are there any tax savings associated with Option 2?**

A: An employer-provided subsidy for transit or vanpool costs is tax-free to both the employer and the employee, up to maximum amount permitted by the federal tax code. (The maximum amount is currently \$130 per month.) Employers do not pay FICA taxes on the subsidy amount provided to employees, nor do employees pay income taxes or their share of the FICA tax on the subsidy. Additionally, for the purpose of calculating corporate income taxes, the transit/vanpool subsidy may be deductible as a business expense. (Employers should check with their tax advisor).

Option 3

**Q: Are there any tax savings associated with Option 3?**

A: Employers may be able to deduct the cost of providing the transportation as a business expense for the purpose of calculating corporate income taxes. (Employers should check with their tax advisor).

**Q: My company belongs to a consortium of employers who collectively pay for a shuttle for all of our employees to use. Does this qualify for the purpose of compliance with the Program?**

A: Yes, for the purpose of Option 3, an employer may collaborate with other employers to provide transportation for their employees on a collective basis, provided that the employer is making a financial contribution to support the shuttle service. This also applies in the case of employers who collaborate to finance long-distance bus service for their employees.

**Q: My company worksite is served by a shuttle (or bus), but we do not contribute monetarily to help operate the shuttle service. Does this qualify for the purpose of complying with the Program via Option 3?**

A: No. In order to comply with the Program by means of

Option 3, an employer must contribute to funding the shuttle, either directly, or by participating in a formal transportation management association.

**Q: How is “low-cost” transit defined for the purpose of Option 3?**

A: For the purpose of complying with the Program via Option 3, employers may charge a fare to their employees, provided that the fare is “low cost”. The Air District and MTC define “low cost” as follows:

**Short-distance transportation:** For short-distance transportation, such as a shuttle from a nearby transit station to the worksite, the employer may charge a maximum of \$2.00 per employee for a one-way trip.

**Long-distance transportation:** For long-distance transportation, such as buses or van service from the employee’s home community to the worksite, the employer may charge a one-way fare of no more than \$0.20 per mile times the one-way trip distance. For example, in the case of an employer providing a bus service for a 30-mile trip from the employee’s home to the worksite, the “low-cost” threshold for the purpose of the Program means that the employer could charge the employee a maximum of \$6.00 per one-way trip.

Bicycling

**Q: Can employees exclude bicycling costs from their taxable wages, like transit/vanpool costs?**

A: Section 132(f) of the federal tax code allows employers to provide a tax-free subsidy of up to \$20 per month (\$240/year) to offset an employee’s bicycle commuting expenses (the purchase of a bicycle, and bicycle maintenance and storage). However, the IRS Code does not allow employees to use their own pre-tax dollars to pay for bicycle commuting expenses. Therefore, allowing employees to use pre-tax dollars to pay for bicycle commuting costs is not included in Option 1.

**Q: What can my company offer employees who wish to bicycle to work?**

A: Pursuant to Option 2, in addition to offering a subsidy for transit and vanpooling you can choose to provide a tax-free subsidy of up to \$20 per month (\$240/year) to offset an employee’s bicycle commuting expenses. (Note: The IRS code states than an employee can receive either a tax-free transit/vanpool subsidy or a tax-free bicycle subsidy, but not both.) Alternatively, you can provide incentives to promote bicycle commuting, such as the tax-free subsidy and/or secure bicycle parking, in the context of an alternative commuter benefit Program pursuant to Option 4.

## Carpooling

**Q: Can employees exclude carpooling costs from their taxable wages, like transit/vanpool costs?**

A: No. The federal tax code does not allow carpool costs to be excluded from taxable wages.

**Q: What can we offer employees who wish to carpool to work?**

A: You could choose to offer [Option 4A: Carpool Subsidy](#), which is a carpool subsidy of \$3/day per employee that carpools to work, along with preferred parking for carpoolers and one additional commuting measure of your choice. You could also choose to offer Option 4B: Carpool Promotion, which includes the provision of preferred parking for carpoolers, participation in a guaranteed ride home Program, and two additional commuting measures of your choice.

**Q: What is the difference between a vanpool and a carpool?**

A: In the IRS Code, a vanpool is defined as any highway vehicle with seating capacity for at least six adults, excluding the driver, that meets two requirements for mileage use:

1. At least 80 percent of the vehicle use must be for commuter transportation, and
2. When used for commuting, at least half of the seats must be occupied, on average, excluding the driver.

*Note: The cost for participating in a vanpool for commuting purposes can be excluded from taxable wages, pursuant to the IRS Code. However, the IRS Code does not allow carpool commuting costs to be excluded from taxable wages.*

## Teleworking

**Q: My company allows our employees to telework. Does this qualify for the purpose of complying with the Program?**

A: The Air District and MTC recognize that teleworking can be an effective means of reducing drive-alone commute trips, especially at work sites that are not well served by transit. Teleworking can be used as a “Primary Measure”

for the purpose of complying with the Program by means of [Option 4A](#). Staff recommends implementing a company-wide telework policy for your employees, and suggests that employees who participate in teleworking to do so at least once per week on a regular basis. To comply with the Program by means of [Option 4A](#), in addition to implementing a telecommuting policy, you must also offer two secondary benefits ([see the guidance on Option 4](#)).

## Compressed Work-Week Schedule

**Q: Can my company comply with the Program by allowing our employees to work a “Compressed Work Week” schedule?**

A: The Air District and MTC recognize that compressed work week (CWW) schedules may be an effective means to reducing drive-alone commute trips, especially at work sites that are not well served by transit. A CWW schedule can be used as a “Primary Measure” for the purpose of

complying with the Program by means of [Option 4A](#). Staff recommends implementing a company-wide compressed work-week policy for your employees, and suggests that participating employees use a 9/80 or 4/10 schedule. To comply with the Program by means of Option 4A, in addition to implementing a CWW schedule policy, you must also offer two secondary benefits ([see the guidance on Option 4](#)).

### Parking Cash-Out

**Q: Does “Parking Cash-Out” qualify for the purpose of complying with the Program?**

A: “Parking cash-out” (PCO) means that an employer that provides subsidized parking for its employees offers them the option to take a cash payment in lieu of the parking subsidy. Studies show that PCO is an effective means to reduce drive-alone commuting. State law requires employers who meet certain criteria to offer PCO to

their employees. An employer that makes PCO available to its employees, either to comply with State law, or on a voluntary basis, may submit an alternative commuter benefit proposal pursuant to Option 4A, choosing PCO as the “Primary Measure”. To comply with the Program by means of Option 4A, in addition to parking cash-out, you must also offer two secondary benefits ([see guidance on Option 4](#)).

### Electric Vehicles

**Q: Can my company comply with the Program by promoting the use of electric vehicles by our employees?**

A: Yes, you can submit a proposed Program to promote the use of electric vehicles by your employees as a “Primary Measure” in an alternative commuter benefit proposal

pursuant to Option 4A. To comply with the Program by means of Option 4A, in addition to implementing a CWW schedule policy, you must also offer two secondary benefits ([see the guidance on Option 4](#)). Or you may propose an electric vehicle Program by means of Option 4C.