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## District of Columbia employers must offer employees clean-air transportation alternatives to parking benefits or a pay a compliance fee

### Summary

- *Effective January 15, 2023, the District of Columbia seeks to promote clean-air transportation by requiring that covered employers offer their employees clean-air transportation alternatives to their existing free or subsidized parking benefit, implement a transportation demand management plan (TDM), or pay a Clean-Air Compliance fee of \$100 per month for each employee offered a parking benefit.*
- *All covered employers, regardless of how they address the clean-air compliance requirements, are also required to submit a report every two years to assist the District with ongoing planning and enforcement efforts.*

Under District of Columbia law ([D.C. Law 23-113](#); amending [D.C. Law 20-142](#)), and effective January 15, 2023, the District seeks to promote clean-air transportation by requiring that covered employers offer their employees clean-air transportation alternatives to their existing free or subsidized parking benefit, implement a transportation demand management plan (TDM) or pay a Clean-Air Compliance fee of \$100 per month for each employee offered a parking benefit.

All covered employers, regardless of how they address the clean-air compliance requirements, are also required to submit a report every two years to the [District Department of Transportation](#) (DDOT) to assist the District with ongoing planning and enforcement efforts.

### Providing alternatives to free or subsidized parking

A covered parking benefit is parking within the District of Columbia that is within 0.5 miles of the business premises and is given to employees in addition to compensation, either directly or through an employer subsidy;

the employee pays nothing, or less than the fair market value for the benefit. A covered parking benefit does not include parking that is offered to employees who are required to use a personal motor vehicle in the regular performance of their work.

If an employer provides covered parking benefits to employees, it has three choices:

**1. Offer employees a clean-air transportation fringe benefit that is equal to or greater than the monthly market value of the parking benefit offered to the employee**

A clean-air transportation fringe benefit includes:

- Transportation in a “commuter highway vehicle,” if this transportation is in connection with travel between the employee's residence and place of employment
- Any transit pass as defined in IRC Section 132(f)(5)(A)
- Any qualified bicycle commuting reimbursement, as that term is defined in IRC Section 132(f)(5)(F)(i)

Employees may accept the clean-air transportation fringe benefit only if they have declined the parking benefit offered by the covered employer.

Employees who accept a clean-air transportation fringe benefit must, in a form determined by the DDOT, estimate the amount of the clean-air transportation fringe benefit that they will use each month.

If employees do not use the full amount of their clean-air transportation fringe benefit, the covered employer must provide payments to the employee for the difference. These payments may be in the form of increased compensation, a contribution toward the employee's health insurance premiums, or a combination of both.

**2. Pay to the DDOT a Clean-Air Compliance fee of \$100 per month for each employee who is offered a parking benefit**

**3. Implement a TDM**

Covered employers may adopt a TDM under which the covered employer develops a plan to reduce employee commutes by car by 10% annually, until 25% or less of the covered employer's employees commute to the city by car. Each TDM is subject to review and must be approved by the DDOT. Annual reporting metrics must also be provided as specified under D.C. Code Section 32-152.01 (d)(3)(A).

**Reporting to the DDOT**

Every two years, with the first report due January 15, 2023, all covered employees, regardless of which clean-air compliance option they choose, must submit a report to the DDOT that includes:

- Their total number of employees
- The number of their employees:

- Offered a parking benefit
- Using a parking benefit
- Offered a clean-air transportation fringe benefit
- Using a clean-air transportation fringe benefit
- For whom the employer is paying the \$100 Clean-Air Compliance fee
- Any other information required by the mayor in rulemaking

Employers that are exempt from these requirements must report the basis for their exemption.

### **Covered employers and exemptions**

Under D.C. Law 20-142, a District of Columbia business with more than 20 employees is a covered employer.

D.C. Law 23-113 provides the following exemptions:

- A covered employer that, before October 1, 2020, owned, and continues to own, the parking spots used by the employees who are offered a parking benefit, is exempt from these requirements.
- If a covered employer leases the parking spot used by the employee who is offered a parking benefit, the law applies to parking benefits at the end of the current lease term, regardless of whether the lease agreement contemplated extensions beyond the current lease term.
- If a covered employer is party to a TDM that was reviewed by the Department, the law applies to the covered employer at the end of the current term of the TDM plan, regardless of whether the TDM plan contemplated extension beyond the current term, or five years after October 1, 2020, whichever is earlier.
- If, before October 1, 2020, a covered employer was party to a “Campus Plan” approved under District of Columbia Municipal Regulations (11 DCMR § X101), the law applies to the covered employer at the end of the current term of the Campus Plan, regardless of whether the Campus Plan contemplated extension beyond the current term, if the Campus Plan requires annual reporting to the Department of:
  - The current percentage, and year-over-year change in the percentage, of trips to campus that are made by car, including for-hire vehicles
  - Performance standards in the Campus Plan related to reducing the percentage of trips to campus that are made by car, including for-hire vehicles
  - Policies that the covered employer will adopt to meet the performance standards in the Campus Plan related to reducing the percentage of trips to campus that are made by car, including for-hire vehicles

### **Ernst & Young LLP insights**

The District of Columbia’s clean-air transportation requirements are complex and will require employers to carefully plan how they will approach compliance. Businesses should consider reaching out to their labor law advisors for assistance.

Contact us for more information

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