

More Flexibility for Compliance in Flexible Commuter Benefits Bill

Changes to the Transportation Equity Amendment Act from the 2017 Version (B22-175) to the 2019 Version (B23-148) responds to employers' concerns with greater flexibility

The original impetus for changing the Transportation Equity Amendment Act of 2017 came about from early 2018 discussions. Specifically, a January 29, 2018 stakeholder meeting about the bill, convened by Chairperson Cheh and Councilperson Allen, brought together representatives from the Coalition for Smarter Growth, employer representatives, and major institutional employers. The meeting ended with a request from Chairperson Cheh that participants provide in writing compromises that they could accept to move the legislation forward. Proposed “flexibilities” were subsequently shared in writing from the Coalition for Smarter Growth. (We are not aware of the business interests in attendance proposing any compromises.) Changes from the 2017 to 2019 bills largely reflect compromises that were proposed by the Coalition for Smarter Growth. The 2019 bill added no new requirements from the 2017 bill, but rather fleshed out the new compliance options that were created in the 2019 bill. The new options are responding to concerns that businesses wanted more such options after reviewing the 2017 bill. The options would give additional flexibility if chosen by the businesses that continued to subsidize commuter parking for their workers.

The numerous policy flexibilities added to the 2019 bill were on top of the flexibilities included in the already-light-touch 2017 bill, where, in both cases, employers would retain complete flexibility in the parking benefits they choose to offer (and could make changes at any time) and thus control whether they are subjected to a cash-out requirement at all.

New Flexibilities Added by the 2019 Bill

Owned parking exemption

The most substantial change between the versions of the bills was that the 2019 bill exempted employers that own their own parking and provide it to their employees from having to offer parking cash out, or do anything else for that matter. This is a concession that the Coalition for Smarter Growth does not endorse, but nonetheless accepts. This provision largely eliminates the compliance concerns expressed by District universities and hospitals by eliminating requirements that they would otherwise face. It also means that owned parking at government sites are unaffected but the bill.

New health care subsidy alternative to providing taxable cash

An employer can opt to increase its subsidy for an employee's health benefit as an alternative to providing an equivalent amount for parking cash out. This would exempt the employer under the 2019 bill from providing such an employee any cash or other benefits. By reallocating an employer expenditure from a parking benefit to a health plan contribution, the employer and employee would preserve the exclusion from all payroll taxes and employee income taxes, while allowing the employee to fully recoup the value of the parking that he or she would be willing to exchange for the benefit. This flexibility was a response to employers who wanted an alternative to a cash payment/wage increase for compliance if they chose to continue to subsidize employee parking.

Employer-implemented transportation demand management (TDM) plan option

A covered employer can choose to implement a TDM plan that achieves or makes substantial progress toward achieving a mode split performance goal of no more than a 25% share of employees commuting via single-occupancy vehicle (the Sustainable DC/MoveDC mode split goal). As a result of language included in the 2019 bill, this employer would be exempt from having to offer cash in lieu of a parking space so long it continues to meet its performance goals. The TDM plan would have to be approved by the District Department of Transportation (DDOT), and the employer would be responsible for regularly reporting on the plan's performance. This flexibility was originally offered to address concerns raised by universities and hospitals that would now (in the 2019 bill) be exempted from the law, since, in the vast majority of cases, they own their own parking. Nevertheless, this provision provides new flexibilities to other businesses that would not be exempt from the law.

Giving employers the benefit of the doubt in calculating the market value for parking and thus the required cash-out level

The Coalition for Smarter Growth was sympathetic to business fears of getting sanctioned for mis-valuing parking rates where such rates are not widely known. As such, the coalition proposed adding a provision to the 2019 bill whereby if commercially available monthly parking of the type that the employer is subsidizing (e.g., on a surface lot or inside a garage) is not available within a one-quarter mile radius to establish what an arm's length market transaction would cost (which is the Internal Revenue Service method for establishing such a value), the employer could establish its own value that would be presumed to be accurate if a reasonable justification is offered and documented (e.g., if based on nearby Craigslist prices for people leasing their own private parking spots and if the parking is priced such that no waitlist exists for employees to obtain such parking). In the end, language was added to the 2019 bill that requires DDOT to issue regulations for valuing parking benefits where there is no privately owned parking nearby to enable a price comparison. The coalition agrees with business interests that DDOT should promulgate flexible regulations after legislative enactment, and, assuming legislative enactment, will weigh in with DDOT in support of such flexibility after it issues a notice requesting input.

Cutting the frequency of required business reporting in half

The 2019 bills requires businesses subjected to the provisions of the legislation to report about its related compliance activities once every two years instead of annually as the 2017 bill would have required. Businesses that for whatever reason are exempt from compliance would have no reporting requirements.

Unchanged Compliance Flexibilities Contained in Both the 2017 and 2019 Bills

Exempting employers with fewer than 20 employees

Council and business interests are particularly sensitive to burdens placed on small businesses. The underlying law that B23-148 would amend (the Sustainable DC Omnibus Act of 2014) already exempts employers with fewer than 20 employees from having to offer a pre-tax transit benefit. This exemption would carry through to the new commuter benefits equity provisions.

Compliance period commences at the end of the current lease for parking, so that there is no overlapping cost for an employer-provided commute benefit

The bill recognizes that an employer might be in the middle of a lease for one or more parking spaces. Thus, the covered employer is not required to offer an alternative to a parking space subsidy until the current lease expires.

Providing a payment in lieu of compliance option

Each version of the bill would allow covered employers to continue to subsidize parking without offering cash out if they pay a Clean Air Compliance fee of \$100 per month for each employee offered parking benefits.

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