

## DEPARTMENT OF CONSUMER AFFAIRS

### Notice of Proposed Hearing and Opportunity to Comment

#### What are we proposing?

Proposed rules to clarify Chapter 9 of Title 20 of the Administrative Code of the City of New York (as added by Local Law 53 for the year 2014), also known as the “Mass Transit Benefits Law,” establish requirements to implement the Law and meet its goals, and provide guidance to covered employees and employers.

**When and where is the Hearing?** The Department of Consumer Affairs will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 am on Friday, October 9, 2015. The hearing will be in Department of Consumer Affairs hearing room at 66 John Street, 11<sup>th</sup> Floor, New York, New York.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department of Consumer Affairs through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [Rulecomments@dca.nyc.gov](mailto:Rulecomments@dca.nyc.gov).
- **Mail.** You can mail written comments to Mary Cooley, Director of City Legislative Affairs, Department of Consumer Affairs, 42 Broadway, 8<sup>th</sup> Floor, New York, NY 10004.
- **Fax.** You can fax written comments to the Department of Consumer Affairs, (646) 500-5962.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-436-0392. You can also sign up in the hearing room before the hearing begins on October 9th. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** Written comments may be submitted on or before 5 p.m. on October 9, 2015.

**Do you need assistance to participate in the Hearing?** You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-436-0155. You must tell us by October 7, 2015.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the Website at <http://rules.cityofnewyork.us/>. A

few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available between the hours of 9 a.m. and 5 p.m. to the public at the office Mary Cooley, Director of City Legislative Affairs, Department of Consumer Affairs, 42 Broadway, 8<sup>th</sup> Floor, New York, NY 10004.

**What authorizes the Department of Consumer Affairs to make this rule?** Section 1043 of the New York City Charter and Section 20-926(d) of Chapter 9 of Title 20 of the Administrative Code of the City of New York authorize the Department of Consumer Affairs to make these proposed rules. These proposed rules were not included in the Department’s regulatory agenda for this Fiscal Year because it was not contemplated when the Department of Consumer Affairs published the agenda.

**Where can I find the Department of Consumer Affairs’ rules?** The Department of Consumer Affairs’ rules are in title 6 of the Rules of the City of New York.

**What laws govern the rulemaking process?** The Department of Consumer Affairs must meet the requirements of Section 1043 of the New York City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

### **Statement of Basis and Purpose of Proposed Rule**

In October 2014, the City Council passed Local Law 53 of 2014, otherwise known as the Mass Transit Benefits Law, which requires employers with 20 or more full time employees to offer certain pre-tax mass transit benefits to their employees. The law is expected to reduce transportation costs to employees, promote a cleaner environment by increasing the use of mass transit and lower payroll taxes for employers.

The proposed rules clarify provisions in the Mass Transit Benefits Law, establish requirements to implement the law and meet its goals, and provide guidance to employers and employees. Specifically, the rules:

- Set forth the minimum time an employee must have been employed by the company to qualify for transportation benefits;
- Require that employees maintain certain documentation demonstrating compliance with the law;
- Establish how business size is calculated to determine whether a business is covered under the law; and
- Clarifies how the law applies to temporary help firms.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

## Proposed Rule

Section 1. A new chapter 9 of Title 6 of the Rules of the City of New York is added to read as follows:

### CHAPTER 9 MASS TRANSIT BENEFITS

#### §9-01 Definitions.

As used in this chapter, the following terms have the following meanings:

“Chain business” means any employer that is part of a group of establishments that share a common owner or principal who owns at least thirty percent of each establishment where such establishments (i) engage in the same business or (ii) operate pursuant to franchise agreements with the same franchisor as defined in general business law section 681; provided that the total number of employees of all such establishments is at least twenty.

“Transportation fringe benefits” means the pre-tax payroll deduction, authorized pursuant to 26 U.S.C. § 132(a)(5), that employers are required to offer to full-time employees under the Mass Transit Benefits Law for the full-time employee to purchase transit passes or similar forms of payment for transportation on public or privately-owned mass transit to commute to or from a workplace or work location in New York City.

“Employee” means an “employee,” “manual worker,” “railroad worker,” “commission salesman,” and “clerical or other worker” as set forth in § 190 of the New York State Labor Law.

“Employer” means “employer” as set forth in § 190 of the New York State Labor Law that employs twenty or more full-time employees in New York City.

“Full-time employee” means an “employee,” “manual worker,” “railroad worker,” “commission salesman,” and “clerical or other worker” as set forth in § 190 of the New York State Labor Law who has worked an average of 30 hours or more per week in the most recent four weeks, any portion of which was in New York City, for a single employer.

“Mass Transit Benefits Law” means Chapter 9 of Title 20 of the Administrative Code of the City of New York as amended from time to time and in effect.

“Month” has the meaning set forth in § 190(8) of the New York State Labor Law.

“Temporary help firm” means an employer that recruits, hires and supplies employees to perform work or services for another organization to: (i) support or supplement the other organization’s workforce; (ii) provide assistance in special work situations including, but not limited to, employee absences, skill shortages or seasonal workloads; or (iii) perform special assignments or projects.

“Week” has the meaning set forth in § 190(8) of the Labor law.

### **§9-02 Qualified Transportation Fringe Benefits**

For purposes of the Mass Transit Benefits Law, “qualified transportation fringe benefits” means transportation fringe benefits as defined in § 9-01 of this chapter.

### **§9-03 Full-time Employees and Determination of Size of Employer.**

- (a) For purposes of the Mass Transit Benefits Law, a “full-time employee” means full-time employee as defined in § 9-01 of this chapter, including the requirement in that definition that an employee must work an average of 30 hours or more per week during a four week period before he or she qualifies as a “full-time employee.”
- (b) An employer’s number of full-time employees is determined by calculating the average number of full-time employees for the most recent consecutive three-month period, provided that for an employer that has operated for less than three months, the number of full-time employees is determined by calculating the average number of full-time employees per week for the period of time in which the employer has been in operation.
- (c) Full-time employees at all of an employer’s or a chain business’s locations in New York City shall be counted in determining the number of full-time employees of the employer.

### **§9-04 Temporary Help Firms.**

- (a) Where a temporary help firm supplies a full-time employee to another organization, the temporary help firm shall be the employer of the full-time employee for purposes of the Mass Transit Benefits Law and must comply with its provisions, regardless of the size of the other organization.
- (b) To determine the number of hours worked each week by an employee working for a temporary help firm, the employer must aggregate the number of hours worked by the employee in the most recent four weeks at all placements.

### **§9-05 Employee Eligibility.**

- (a) An employer must provide transportation fringe benefits to full-time employees by January 1, 2016, or four weeks after employment as a full-time employee with employer, whichever is later.
- (b) An employer is not required to provide transportation fringe benefits to a full-time employee who works remotely and does not commute to a physical office or work site in New York City.
- (c) If an employer’s work force is reduced to fewer than 20 full-time employees, the full-time employees using pre-tax earnings to purchase transportation fringe benefits before the work force was reduced must continue to be provided with the opportunity to use pre-tax earnings to purchase transportation fringe benefits for the

duration of their employment as a full-time employee.

**§9-06 Maximum Deductions.**

Employers must offer full-time employees the maximum amount permitted for pre-tax deductions for transportation fringe benefits as are available under federal law.

**§9-07 Recordkeeping Requirements.**

Employers must retain records for two years sufficient to demonstrate that (i) each full-time employee eligible for transportation fringe benefits pursuant to the Mass Transit Benefits Law and this Chapter was offered the opportunity to use pre-tax earnings to purchase transportation fringe benefits to the extent permitted under federal law and (ii) whether the employee accepted or declined the offer. Employers may use the form provided by the Department and available on the Department's website to document compliance.

**§9-08 Employer-Funded Transit Benefits.**

- (a) As an alternative to providing the opportunity to purchase pre-tax transportation fringe benefits, an employer may provide at the employer's expense a transit pass or similar form of payment for transportation on public or privately-owned mass transit to commute to or from a workplace or work location in New York City.
- (b) If the employer-provided transit pass or similar form of payment is less than the maximum qualified transportation fringe benefit allowed under federal law, then the employer must offer employees the opportunity to make up the difference in pre-tax payroll deductions.

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Mass Transit Benefits Rules

**REFERENCE NUMBER:** 2015 RG 103

**RULEMAKING AGENCY:** Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: September 4, 2015

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Mass Transit Benefits Rules**

**REFERENCE NUMBER: DCA-35**

**RULEMAKING AGENCY: DCA**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

September 4, 2015  
Date