Rule

Chapter 8 of Title 6 of the Rules of the City of New York reads as follows:

CHAPTER 8 TRANSPORTATION BENEFITS

§8-01 Definitions.

As used in this chapter and, where applicable, in the Transportation Benefits Law, the following terms have the following meanings:

"Chain business" means a group of establishments that share a common owner or principal who owns a majority 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.

"Commuter highway vehicle" means a "commuter highway vehicle" as such term is defined in Section 132(f)(5)(B) of the Internal Revenue Code.

"Cure period" means the ninety-day period immediately following a finding of a first violation.

"Department" means the Department of Consumer Affairs of the City of New York.

"Employee" means an "employee," "manual worker," "railroad worker," "commission salesman," or "clerical or other worker" as such terms are defined in § 190 of the New York State Labor Law. "Employee" does not include partners, sole proprietors, independent contractors, or two-percent shareholders of S-corporations.

"Employer" means an "employer" as such term is defined in § 190 of the New York State Labor Law and that employs twenty or more full-time employees in New York City. The common owner or principal of a chain business shall be considered the employer of the full-time employees of such chain business.

"First violation" means the first finding by the administrative tribunal that a particular employer has violated the Transportation Benefits Law since July 1, 2016.

"Full-time employee" means an employee who has worked an average of 30 hours or more per week in the most recent four weeks as of any date of counting, any portion of which was in New York City, for a single employer.

"Earnings" shall have the same meaning as the term "gross income" as used in § 132 of the Internal Revenue Code.

"Month" means an employer's regularly established fiscal month.

"Recidivist violation" means any new finding by the administrative tribunal that a particular

employer has violated the Transportation Benefits Law, after the first finding by the administrative tribunal that the employer had violated the Transportation Benefits Law since July 1, 2016.

"Subsequent violation" means each continuous thirty-day period after the expiration of the cure period, or after the finding of a recidivist violation by the administrative tribunal, in which the employer has not demonstrated to the department's satisfaction that it is complying with the Transportation Benefits 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.

"Transportation Benefits Law" means Chapter 9 of Title 20 of the Administrative Code of the City of New York.

"Transportation fringe benefits" means qualified transportation fringe benefits, other than qualified parking, that may be purchased using pre-tax earnings in accordance with § 132 of the Internal Revenue Code.

"Week" means an employer's regularly established payroll week.

§8-02 Determination of Size of Employer.

(a) 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.

(b) 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.

§8-03 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 Transportation 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.

§8-04 Employee Eligibility.

(a) An employer must offer its full-time employees the opportunity to use pre-tax earnings to purchase transportation fringe benefits by January 1, 2016, or four weeks after such employee's commencement of employment as a full-time employee of the employer, whichever is later.

(b) If an employer's work force is reduced to fewer than 20 full-time employees, the employer must continue to offer the opportunity to use pre-tax earnings to purchase transportation fringe benefits to full-time employees who were employer's full-time employees before the work force was reduced.

§8-05 Maximum Deductions.

Employers must offer full-time employees the opportunity to use the maximum amount of pre-tax earnings permitted under federal law for the purchase of transportation fringe benefits.

§8-06 Recordkeeping Requirements.

Employers must retain records for two years sufficient to demonstrate (i) that each full-time employee eligible for transportation fringe benefits pursuant to the Transportation Benefits Law and this chapter was offered the opportunity to use pre-tax earnings to purchase transportation fringe benefits in accordance with this chapter; or (ii) records sufficient to demonstrate that the employer provides, at the employer's expense, a transit pass or similar form of payment for transportation on public or privately-owned mass transit or in a commuter highway vehicle at the maximum federal transportation fringe benefit amount that may be excluded from pre-tax earnings. Employers may use the form provided by the department and available on the department's website to document compliance.

§8-07 Employer-Funded Transportation Benefits.

(a) As an alternative to offering the opportunity to use pre-tax earnings to purchase 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 or in a commuter highway vehicle.

(b) If the employer-provided transit pass or similar form of payment is less than the maximum transportation fringe benefit that may be excluded from pre-tax earnings under federal law, then the employer must offer employees the opportunity to use pre-tax earnings to purchase transportation fringe benefits for an amount equal to the difference between the value of the employer-provided transit pass or similar form of payment and the maximum amount that may be excluded from gross earnings under federal law.

§8-08 Financial Hardship Exemption

(a) The department may waive the requirements of the Transportation Benefits Law for an employer if such employer demonstrates to the department's satisfaction that

offering the opportunity to use pre-tax earnings to purchase transportation fringe benefits would be a financial hardship for such employer.

(b) To qualify for a waiver, an employer must present compelling evidence that complying with the Transportation Benefits Law would be impracticable and create a severe financial hardship.

§8-09 Enforcement and Penalties

(a) The department may issue a notice of violation pursuant to section 20-926(b) of the Administrative Code.

(b) Any employer found to be in violation of the Transportation Benefits Law will be liable for a civil penalty of two-hundred fifty dollars payable to the city of New York for the first violation, for any and each subsequent violation, and for any and each recidivist violation.

(c) A civil penalty will not be imposed on an employer for the first violation if the employer demonstrates to the satisfaction of the department within the cure period that it is complying with the Transportation Benefits Law.

(d) For the purposes of this section, "satisfaction of the department" with reference to an employer's compliance with the Transportation Benefits Law means proof that the employer has offered its full time employees the opportunity to use pre-tax earnings to purchase transportation fringe benefits or that the employer provides, at the employer's expense, a transit pass, or similar form of payment, for transportation on public or privately-owned mass transit or in a commuter highway vehicle at the maximum federal transportation benefit amount that may be excluded from pre-tax earnings.

(e) An employer seeking to demonstrate that it is complying with the Transportation Benefits Law may do so by submitting the compliance form provided by the department and available on the department's website. The department may require submission of additional information, including documentary evidence, reasonably necessary to prove that a first violation was cured within the cure period.