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Date:        June 6, 1995

To:          Personnel Officers  
             Workers’ Compensation Administrators

From:        Cathy Robinson, Director  
             Human Resources Administration

Subject:      Workers’ Compensation - Alternative Transportation Programs

A new California law (S.B. No. 1360, Chapter 622, Statutes 1994) added Sec. 3600.8 to the Labor Code which impacts the eligibility of vanpool participants for workers’ compensation coverage. In general, for the CSU the law states:

* State employees, including CSU employees, who participate in alternative commute programs and ride in vanpool vehicles registered to or owned by the state are considered to be within the course and scope of employment for workers’ compensation purposes while riding in those vehicles.

This law mandates that workers’ compensation is the exclusive remedy for state employees who are injured in an accident while riding in a state vanpool thus barring tort recovery.

For those campuses who may have non-CSU (e.g. foundation and/or public or private sector) participants riding in campus vanpools, following are additional highlights of the law which may impact how the employers of those participants choose to address the liability issues for their employees. You may wish to share this information with other employers who participate in your campus vanpool.

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• An employee who voluntarily participates in an alternative commute program mandated by a governmental entity (e.g., an air quality management district) and does not receive a wage/salary for the commute time is acting outside the course of employment for purposes of workers’ compensation coverage. Accordingly, such an employee is not covered under the employer’s workers’ compensation program. If injured, the employee may bring an action of law for damages against the employer.

• An employer’s reimbursement of employee expenses or subsidization of costs related to an alternative commute program is not considered payment of a wage or salary for the period of travel.

• If the employer elects to provide workers’ compensation coverage for those employees who are passengers in a vehicle owned and operated by the employer or an agent of the employer, the employee will be considered to be within the course of employment for purposes of workers’ compensation coverage if the employer notifies the employee in writing prior to participation or the coverage becoming effective.

• Despite the changes effected by this law, where the vanpool vehicle is owned or registered to the employer, the vanpool program may continue to provide workers’ compensation benefits to employees who participate in the alternative commute program and ride in the vanpool. The employer can cover the employees under its workers’ compensation program.

I have attached a copy of the law for your reference. If you have any questions, please contact Human Resources at (310) 985-2669.

CR/Ilb
Attachment
LABOR—CARPOOLS AND VANPOOLS—EMPLOYER'S LIABILITY

CHAPTER 622

S.B. No. 1360

AN ACT to add Section 3600.8 to the Labor Code, to add Section 5392.3 to the Public Utilities Code, to amend Section 17149 of the Revenue and Taxation Code, and to add Section 18029.3 to the Vehicle Code, relating to employees.

[Approved by Governor September 17, 1994.]

[Filed with Secretary of State September 19, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1360, Leslie. Employees: alternative transportation.

Existing law with respect to workers' compensation generally requires, as a condition of employer liability for compensation for an injury suffered by an employee of that employer that the employee sustain that injury in the course of his or her employment.

This bill would provide, except as specified, that an employee who voluntarily participates in a government-mandated or government-sponsored alternative commute program, as defined, is not acting within the course of his or her employment while utilizing that program unless that employee receives wages or salary for those periods of travel. This bill also would specify that an employee who is injured while acting outside the course of his or her employment, or his or her dependents in the event of the employee's death, shall not be barred from bringing an action at law for damages against his or her employer as a result of that provision. This bill would state the intent of the Legislature that this specification only declare and clarify, but not expand, limit, or otherwise alter existing law.

Existing law requires certain charter-party carriers of passengers who own and operate vehicles and other owners of vehicles to maintain liability insurance, as specified.

This bill would require charter-party carriers of passengers who own and provide vanpool vehicles to employers or a group of employees and employers who own vanpool vehicles to maintain specified liability insurance covering personal injury and property damage.

The Personal Income Tax Law provides an exclusion from gross income for compensation or the fair market value of any other benefit, except salary or wages, that is received by an employee from an employer for the use of various transportation methods or arrangements, including a vanpool or transit pass.

This bill would include within those specified methods or arrangements bicycling, commuting by ferry, the use of an alternative transportation method, not already specified, that reduces the use of a motor vehicle by a single occupant, and travel to or from telecommuting facilities. This bill would also clarify or modify the definitions of a vanpool and transit pass.

The people of the State of California do enact as follows:

SECTION 1. Section 3600.8 is added to the Labor Code, to read:

3600.8. (a) No employee who voluntarily participates in an alternative commute program that is sponsored or mandated by a governmental entity shall be considered to be acting within the course of his or her employment while utilizing that program to travel to or from his or her place of employment, unless he or she is paid a regular wage or salary in compensation for those periods of travel. An employee who is injured while acting outside the course of his or her employment, or his or her dependents in the event of the employee's death, shall not be barred from bringing an action at law for damages against his or her employer as a result of this section.
(b) Any alternative commute program provided, sponsored, or subsidized by an employee’s employer in order to comply with any trip reduction mandates of an air quality management district or local government shall be considered a program mandated by a governmental entity. An employer’s reimbursement of employee expenses or subsidization of costs related to an alternative commute program shall not be considered payment of a wage or salary in compensation for the period of travel. If an employee’s salary is not based on the hours the employee works, payment of his or her salary shall not be considered to be in compensation for the period of travel unless there is a specific written agreement between the employer and the employee to that effect. If an employer elects to provide workers’ compensation coverage for those employees who are passengers in a vehicle owned and operated by the employer or an agent thereof, those employees shall be considered to be within the course of their employment, provided the employer notifies employees in writing prior to participation of the employee or coverage becoming effective.

(c) As used in this section, “governmental entity” means a regional air district, air quality management district, congestion management agency, or other local jurisdiction having authority to enact air pollution or congestion management controls or impose them upon entities within its jurisdiction.

(d) Notwithstanding any other provision of law, vanpool programs may continue to provide workers’ compensation benefits to employees who participate in an alternative commute program by riding in a vanpool, in the case in which the vanpool vehicle is owned or registered to the employer.

(e) Employees of the state who participate in an alternative commute program, while riding in a vanpool vehicle that is registered to or owned by the state, shall be deemed to be within the course and scope of employment for workers’ compensation purposes only.

SEC. 2. Section 5392.3 is added to the Public Utilities Code, to read:

5392.3. Notwithstanding any other provision of law, any charter-party carrier of passengers that contracts to provide a vanpool vehicle, as described in paragraph (1) of subdivision (c) of Section 17149 of the Revenue and Taxation Code, to an employer or a group of employees for the purpose of operating that vehicle for transportation to and from work shall maintain protection against liability with respect to that vehicle in the same form and amount as described in Section 5391.2.

SEC. 3. Section 17149 of the Revenue and Taxation Code is amended to read:

17149. (a) Gross income does not include compensation or the fair market value of any other benefit, except salary or wages, received by an employee from an employer for participation in any ridesharing arrangement in California, including those specified in subdivision (b).

(b) For purposes of this section, compensation or the fair market value of any other benefit received for participation in a ridesharing arrangement in California includes compensation or other benefit received for:

1. Commuting in a vanpool.
2. Commuting in a private commuter bus or buspool.
3. A * * * transit pass for use by the employee or his or her dependents, other than transit passes for use by elementary and secondary school students who are dependents of the employee.
4. Commuting in a subscription taxipool.
5. Commuting in a carpool.
6. Free or subsidized parking.
7. An employee’s bicycling to or from his or her place of employment.
8. Commuting by ferry.
9. The use of an alternative transportation method, other than a method otherwise specified in this subdivision, that reduces the use of a motor vehicle by a single occupant to travel to or from that individual’s place of employment.
10. Travel to or from a telecommuting facility.
(c) For purposes of this section:

(1) “Vanpool” means seven or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry 7 to 15 adults, including the driver, that is used to transport those persons who commute to and from work on a regular basis.

(2) “*** Transit pass***” means any *** purchase of transit rides that entitles the *** holder to any number of transit rides to and from the workplace, whether at a discount rate or the base fare rate.

(3) “Transit” means transportation service for use by the general public that utilizes buses, railcars, or ferries with a seating capacity of 16 or more persons.

(4) “Subscription taxipool” means a type of service in which employers or groups of employees contract with a public or private tax operator to provide daily commuter service for a group of preassembled subscribers on a prepaid or daily fare basis following a relatively fixed route and schedule tailored to meet the needs of the subscribers.

(5) “Ridesharing arrangement” means the transportation of persons in a motor vehicle where that transportation is incidental to another purpose of the driver. The term includes ridesharing arrangements known as carpools, vanpools, and buspools.

(6) “Carpool” means two or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry less than seven adults, including the driver.

(7) “Baspool” means 16 or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry more than 15 adult passengers.

(8) “Private commuter bus” means a highway vehicle which meets all of the following criteria:

(A) Has a seating capacity of at least seven adults, including the driver.

(B) At least 50 percent of the mileage of which can be reasonably expected to be used for the purpose of transporting employees to and from work.

(C) Is acquired by the taxpayer on or after the date of enactment of this section.

(D) With respect to which the taxpayer makes an election under this paragraph on his or her return for the taxable year in which the vehicle is placed in service.

(9) “Free or subsidized parking” means the benefit received from an employer for parking while participating in a ridesharing arrangement within California.

(10) “Alternative commute program” means any alternative transportation method or program the purpose of which is to reduce the use of a motor vehicle by a single occupant to travel to and from that individual’s place of employment.

SEC. 4. Section 16020.3 is added to the Vehicle Code, to read:

16020.3. Notwithstanding any other provision of law, any employer that owns a vanpool vehicle, as described in paragraph (1) of subdivision (c) of Section 17149 of the Revenue and Taxation Code, shall maintain evidence of financial responsibility with respect to that vehicle in the same form and amount as described in Section 5391.2 of the Public Utilities Code.

SEC. 5. It is the intent of the Legislature in enacting Section 1 of this act only to declare existing law and to clarify, and not to expand, limit, or otherwise alter the ability under existing law of any employee, or his or her dependents, to bring an action at law for damages.