Hedge Up Alert: A Heads-Up on Employment Issues Confronting the Hedge Fund Industry

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NYC's New Mass Transit Benefits Law Requires Firms to Offer Pre-Tax Commuter Benefits

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New York City's new Mass Transit Benefits Law (MTBL) takes effect on January 1, 2016. The law requires covered firms to offer eligible employees the opportunity to use pre-tax income to pay for certain qualified transit expenses. Firms also may allow employees to utilize pre-tax earnings for qualified parking, but are not required to do so.

The MTBL applies to firms in New York City with 20 or more full-time, non-union employees. Full-time employees are those who have worked an average of 30 or more hours per week in the most recent four-week period, so long as any portion of the work was in New York City. If a covered firm reduces its full-time workforce to less than 20 employees, the firm still must provide mass transit benefits to the remaining full-time employees for the remainder of their employment.

Firms must allow eligible employees to utilize up to $255 of tax-free dollars for qualified benefits per month—i.e., the maximum amount permitted for pre-tax transit deductions under federal law. Alternatively, firms may offer certain other transit benefits that are of at least equal value to the employee and that comply with the tax law. For example, the New York City Department of Consumer Affairs (DCA), which is responsible for enforcing the MTBL, has indicated that firms may provide employer-paid transit benefits if they so choose, including via a "transit pass or similar form of payment" or a terminal-restricted debit card. If the value of the alternative is less than $255 per eligible employee per month, the firm must offer the employee the opportunity to make up the difference via a pre-tax payroll deduction.

The DCA also has adopted a recordkeeping requirement under which firms must maintain records for two years (1) demonstrate that they offered transit benefits to each eligible employee and (2) indicate whether each employee accepted or declined the offer.

The MTBL does not contain a private right of action; rather, the law is enforced through penalties issued by the DCA. Firms have a six-month grace period, from January 1 until July 1, 2016, before the DCA will commence enforcement. Thereafter, firms notified of a violation will be given a 90-day cure period for first-time violations. If a firm fails to timely cure any violation, the civil penalty will range from $100 to $250, and an additional $250 penalty will be imposed per subsequent violation. Each 30-day period in which a firm fails to offer the required pre-tax benefit is considered a subsequent violation.

Take-Away

Covered New York City-based firms should review their current commuter benefit programs to ensure they are in compliance with the new legislation. Should you have questions regarding these issues, please feel free to contact us.