



California's Parking Cash-Out Program

An Informational Guide For Employers

State law requires certain employers who provide subsidized parking for their employees to offer a cash allowance in lieu of a parking space. This law is called the *parking cash-out program* (Assembly Bill 2109, Katz; Chapter 554, Statutes of 1992). It was enacted after studies showed cash allowances in lieu of parking encourage employees to find alternate means of commuting to work, such as public transit, carpooling, vanpooling, bicycling, or walking. Parking cash-out offers the opportunity to improve air quality and reduce traffic congestion by reducing vehicle trips and emissions. For years, negative tax implications limited the implementation of the law. But in 1998, the federal Transportation Equity Act for the 21st Century (TEA-21) included amendments to the Internal Revenue Code that fixed this problem.

The Air Resources Board is the agency authorized by the Legislature to interpret and administer the parking cash-out law. Board staff has developed this informational guide to help employers determine whether they are subject to the requirements of the law and to answer questions about implementing a parking cash-out program.

The law does not apply to all employers or all employees. Employers with over 50 employees in an air basin designated nonattainment for any state air quality standard must offer a parking cash-out program to those employees who have the availability of subsidized parking that meets certain criteria.

The main provision of the parking cash-out law is less than a page long. But employer parking circumstances are often very complicated, which can make the law complicated to implement. Recognizing this, the goal of this guide is to provide a foundation for employers to carry out the law as it relates to them.

This guide includes:	<u>Page</u>
Text of the law	2
Information on parking cash-out (question/answer format)	
First steps of implementation	3
Employee parking	3
Employee eligibility	4
Cash allowance	5
Informing employees	6
Tax consequences	7
Enforcement	7
Neighborhood parking problems	8
Relationship to other transportation demand measures	8
Eliminating subsidized parking	9
Contacts for questions	9
Eligibility checklist	9
Employer questionnaire	10
(to help determine if employer is subject to the law)	

Text of Parking Cash-Out Law

§ 43845. Parking cash-out program. California Health and Safety Code.

(a) In any air basin designated as a nonattainment area pursuant to Section 39608, each employer of 50 persons or more who provides a parking subsidy to employees, shall offer a parking cash-out program. “Parking cash-out program” means an employer-funded program under which an employer offers to provide a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space.

(b) A parking cash-out program may include a requirement that employee participants certify that they will comply with guidelines established by the employer designed to avoid neighborhood parking problems, with a provision that employees not complying with the guidelines will no longer be eligible for the parking cash-out program.

(c) As used in this section, the following terms have the following meanings:

(1) “Employee” means an employee of an employer subject to this section.

(2) “Parking subsidy” means the difference between the out-of-pocket amount paid by an employer on a regular basis in order to secure the availability of an employee parking space not owned by the employer and the price, if any, charged to an employee for use of that space.

(d) Subdivision (a) does not apply to any employer who, on or before January 1, 1993, has leased employee parking, until the expiration of that lease or unless the lease permits the employer to reduce, without penalty, the number of parking spaces subject to the lease.

(e) It is the intent of the Legislature, in enacting this section, that the cash-out requirements apply only to employers who can reduce, without penalty, the number of paid parking spaces they maintain for the use of their employees and instead provide their employees the cash-out option described in this section.

Related Provisions

Sections 17202 and 24343.5, California Revenue & Taxation Code. Specifies that costs related to a parking cash-out program may be deducted as business expenses for employers.

Section 17090, California Revenue & Taxation Code. States that the cash allowance given to employees must be included in gross income subject to state income and payroll taxes (except any portion used for ridesharing purposes).

Sections 65088.1, 65089, and 65089.3, California Government Code. Requires (1) congestion management agencies to consider parking cash-out when developing and updating the trip reduction and travel demand elements of their congestion management plans, and (2) requires cities or counties to grant appropriate reductions in parking requirements to new and existing commercial developments if they offer parking cash-out programs.

Uncodified language:

The Legislature hereby finds and declares all of the following:

(a) Existing local, state, and federal policies tend to encourage the provision of subsidized parking by employers.

(b) Subsidized parking creates a strong incentive for employees to commute to work in a single occupancy vehicle.

(c) Commuting in a single occupancy vehicle contributes to traffic congestion and air pollution.

(d) In Los Angeles and Orange Counties, more than 90 percent of the commuters receive free worksite parking, but less than 10 percent of employers provide an employee ridesharing or transit benefit.

Information on the Parking Cash-Out Law

Implementation

- *How do I determine whether I am subject to the parking cash-out law?*

The law applies to employers (public or private) that:

- employ at least 50 persons (regardless of how many worksites);
- have worksites in an air basin designated nonattainment for any state air quality standard;
- subsidize employee parking that they don't own;
- can calculate the out-of-pocket expense of the parking subsidies they provide; and
- can reduce the number of parking spaces without penalty in any lease agreements.

(See page 10 for a questionnaire designed to help you determine whether you are subject to the parking cash-out law and that explains the above parameters of the law in more detail.)

- *When must I implement parking cash-out? When does the program end?*

The law went into effect January 1, 1993, and includes no sunset provision specifying an ending date to the program. So the law requires all affected employers to offer a parking cash-out program until and unless the law is changed.

- *Where do I start?*

1. Determine which employee parking is subject to cash-out. (See *Employee Parking* below.)
2. Determine which specific employees are eligible. (See *Employee Eligibility*, page 4.)
3. Calculate the appropriate cash allowance for each eligible employee. (See *Cash Allowance*, page 5.)
4. Inform eligible employees. (See *Informing Employees*, page 7.)

Employee Parking

- *Which employee parking is subject to cash-out?*

Employee parking is subject to cash-out if all the following apply: (1) you subsidize it, (2) you don't own it, (3) you can calculate the out-of-pocket amount you pay for it, (4) it is not a vanpool or carpool space, and (5) if it is leased parking, the lease allows you to reduce the number of parking spaces without penalty.

- *Is parking that is included (“bundled”) in the building lease subject to parking cash-out?*

If you cannot determine the out-of-pocket expenses of the parking you provide, and you do not make a discreet payment solely for parking occupied by an employee, which is almost always the case with bundled parking, the parking is not subject to parking cash-out.

- *I am the sole tenant of a leased parking garage. The lease agreement stipulates that I am subject to paying for all spaces in the garage. Is the parking subject to cash-out?*

Since you cannot reduce the number of parking spaces without penalty, the parking is not subject to cash-out.

Employee Eligibility

- *Which employees are eligible for the cash-out option?*

Employees must be offered the cash-out allowance if they are using, or could use, a subsidized parking space subject to cash-out. Examples include: any employee who is currently using a subsidized space; is offered a subsidized space (now or in the future); or was previously offered a subsidized space but declined, if a subsidized space is still available to him/her.

(See page 9 for an eligibility checklist.)

- *What about current carpoolers, vanpoolers, transit users, telecommuters and those who walk or bike to work?*

These individuals are eligible for parking cash-out if a qualifying subsidized parking space for a single-occupancy vehicle is currently available to them.

NOTE: Carpool and vanpool spaces are not subject to cash-out. This means you *don't* have to offer six members of a vanpool an additional pro-rated \$15 cash allowance for a \$90/month vanpool space.

- *Can employee eligibility change over time?*

Yes. An employee is eligible for cash-out based on the parking space he/she is offered. So, an employee's eligibility can change if the employee's parking circumstances change. Example:

- If an employee changes work sites and goes from a subsidized leased parking space to one that is not eligible (e.g., a space that you own), you are no longer required to offer the employee a cash allowance. And vice versa, if an employee changes from parking in an owned space to a subsidized leased space subject to cash-out, you are required to offer the employee a cash allowance.

- *I don't lease parking, but I reimburse my employees for their commute-related parking costs. Does this trigger cash-out requirements?*

Yes, if the parking costs are reimbursed on a regular basis. If not, then no. Examples:

- You have employees who park regularly in a private garage at a cost of \$60/month. You reimburse each one the full \$60/month. These employees are eligible for a \$60/month cash-out allowance in lieu of being reimbursed for their parking.
- You reimburse employees only for commute-related parking on a sporadic basis related to special circumstances such as having to work overtime. The employees are not eligible for a cash-out allowance because you are not providing a parking subsidy on a regular basis.

- *I provide limited subsidized parking to my employees on a daily first-come, first-served basis. Is this parking subject to parking cash-out?*

To be eligible for parking cash-out, an employee must have the expectation of having a subsidized parking space, whether assigned or unassigned, in which to park.

If you lease 100 spaces that are available daily to 400 employees on a first-come, first-served basis, the employees cannot expect to have a parking space in which to park, and would not be eligible for parking cash-out.

NOTE: Some employers confronted with a similar situation have changed their parking policies, assigning one employee to each parking space and offering a cash allowance equal to the actual cost per space. Others have chosen to begin charging for the parking.

- *How much participation in parking cash-out can I expect?*

Studies indicate that approximately 12 percent of eligible employees, on the average, will take the cash-out offer, based on an average parking subsidy of \$80 (Shoup 1992, 1997). Actual participation at each work site may vary.

- *What if employees who accept the cash allowance ask for their subsidized spaces back? Can employees who don't take cash-out when initially offered take it later?*

The law simply requires you to give employees the parking cash-out option. Employers may establish reasonable policies for administering this benefit such as quarterly or semiannual review. It is suggested that you make cash-out readily available to employees. Policies that require employees to make irrevocable decisions or respond in an unduly short time period are not compatible with the spirit of the law.

- *How do employee bargaining agreements fit into the parking cash-out picture?*

The cash-out program changes employee benefits and working conditions. Therefore, most bargaining agreements will require employers to “meet and confer” regarding cash-out implementation. While negotiations with unions may affect parking policies and how employers go about implementing parking cash-out, a bargaining agreement cannot keep an employer from implementing the law and must not result in any policies that are contrary to the law.

Cash Allowance

- *How much cash allowance must be offered?*

The law requires the cash allowance to equal the parking subsidy -- what you pay for the parking space minus any contribution by the employee. Commute-related subsidies

(e.g., transit pass, ridesharing allowance) may be deducted from the cost of the parking in determining the amount of the cash allowance. Some examples:

- Cost of parking space - \$75/mo. Employee pays nothing to park. *Cash allowance = \$75/mo.*
- Cost of parking space - \$100/mo. Employee pays \$20/mo. to park. *Cash allowance = \$80/mo.*
- Cost of parking space - \$65/mo. Employee does not use space and receives \$50 transit pass (subsidy) from employer every month. *Cash allowance = \$15/mo. (if transit pass still provided).* If the transit pass were increased to \$65/mo., the cash allowance would be \$0/mo.

- *Can the amount of the cash allowance change over time?*

Yes. Since the law requires the cash allowance to equal the parking subsidy, if the subsidy increases or decreases, the cash allowance adjusts to coincide. Some examples:

- Cost per parking space increases \$10/month. You charge your employees an additional \$5/month parking fee. The parking subsidy has increased \$5/month, so the cash allowance also increases \$5/month.
- You increase the amount your employees pay for parking by \$25/month. Your cost per parking space does not change. The parking subsidy has decreased \$25/month, so the cash allowance may also be decreased \$25/month.

- *How often must I provide the cash allowance?*

The law requires that you simply provide a cash allowance that is equal to the parking subsidy. The law does not specify how often. However, providing the cash allowance monthly is the norm, since most parking and commute-related subsidies and/or charges are on a month-to-month basis.

- *I have many work sites with different leased parking rates. Can I average the cost per space?*

Yes. The law would not prohibit you from averaging the cost of subsidized parking subject to the cash-out law and providing one uniform cash-out payment. If you use this method, the cash allowance could also change over time based on the change in the average cost of subsidized parking.

Informing Employees

- *How do I inform employees?*

Some employees are aware of this law. Others will be learning of it for the first time. All need to know your particular strategies for implementing the cash-out program. Many employers have designated an employee, such as their employee transportation coordinator, to be available to discuss with employees what cash-out means to them. It is also important to inform employees in a positive way, such as giving them an example of how parking cash-out can benefit them and their community -- by adding to their pay check while reducing congestion and air pollution.

- *Can I offer cash-out to employees even if the parking is not subject to the law?*

Yes. You may implement cash-out voluntarily. And this may make sense when: (1) you own your parking, provide a travel allowance to all employees, and charge a fee for parking at an

equal or greater rate than the allowance, thus keeping costs to a minimum; (2) unoccupied spaces can be used by your patrons; or (3) you lease some parking spaces and thus must offer cash-out to some, but not all, employees.

Tax Consequences

- *Is the cash allowance considered taxable income?*

Yes. The cash allowance is considered gross income subject to state and federal income and payroll taxes. However, ridesharing subsidies are exempt from state income taxes (Section 17149, Revenue & Taxation Code), and transit or vanpool subsidies up to \$100 per month are exempt from federal income taxes (Section 132(f)(2)(A), Internal Revenue Code).

- *Can my costs related to cash-out be deducted as an employer business expense? Yes.*
- *Is the tax-free status of transit, vanpool, and parking subsidies at risk by offering them along with a cash-out allowance?*

No. Federal legislation was enacted in 1998 allowing employers to offer a combination of cash and tax-free transportation fringe benefits (parking, vanpool and transit subsidies) without losing any of the tax-free benefits. (Note: The cash is still considered taxable income.) This new provision in the tax code is often called the Commuter Choice Program or Commute Benefit Program. For more information on how to use the new federal tax code provisions to your advantage, visit the web sites of the Association for Commuter Transportation at <http://tmi.cob.fsu.edu/act/act.htm> or the web site of the U.S. Environmental Protection Agency's Office of Mobile Sources at <http://www.epa.gov/oms/transp/comchoic/ccweb.htm>.

Federal and state tax laws are constantly changing. For current and reliable information, please contact your tax consultant, the U.S. Internal Revenue Service, or the California Franchise Tax Board.

Enforcement

- *Who administers this program?*

The cash-out mandate is located in Division 26, Part 5, of the California Health & Safety Code, which the Air Resources Board is authorized to administer. However, the parking cash-out mandate is imposed directly on the employer who must meet the criteria of the statute. This type of statute is often described as "self-implementing."

- *Are there any penalties for noncompliance?*

Violations of provisions in Division 26, Part 5, of the Health & Safety Code, which includes the parking cash-out law, are subject to civil penalties not to exceed \$500 per vehicle per civil action. (See Section 43016, Health & Safety Code.) The Air Resources Board would apply the civil penalty per vehicle in a parking space subject to the cash-out program. The focus of ARB administration of the parking cash-out law would be to facilitate compliance before seeking civil penalties.

Neighborhood Parking Problems

- *What about the potential of spillover parking into nearby neighborhoods?*

The law provides that employers may develop guidelines to avoid neighborhood parking problems. Employees must comply with these to be eligible for the cash allowance. Such guidelines might prohibit cash-out recipients from parking on specific streets or in specific neighborhoods, or require the recipient to not drive alone to work (e.g., take the bus, carpool, walk, etc.).

- *My cashed-out employees need to drive to work occasionally. To avoid having them park on neighboring streets, can I set aside a few spaces and reduce the cash allowance proportionately?*

This would be a reasonable policy for accommodating employees and avoiding neighborhood parking problems. Since you would be subsidizing some parking for their use, you could reduce the cash allowance proportionately. (One space set aside for every ten cashed-out employees would equate to a ten percent reduction in the cash allowance.)

Relationship of Cash-Out to Other Transportation Demand Measures

- *How is cash-out related to other ridesharing and transportation demand measures?*

It is suggested that parking cash-out be incorporated into other trip reduction and ridesharing incentives. If alternate means of commuting are made available and affordable through incentives, employees are more likely to take the cash allowance and not drive solo to work. Studies indicate that the most successful trip reduction programs tend to combine parking management and pricing with subsidies for transit, carpooling, and other alternate modes of commuting.

- *Can I make commuting by an alternate mode other than driving alone a condition of accepting the cash allowance?*

The law allows for employers to establish guidelines to avoid neighborhood parking problems (see above). Requiring employees to participate in some form of verifiable trip reduction activity would be a reasonable employer policy to avoid such problems. In fact, many employers have implemented the parking cash-out program as a commute benefits program and avoided using the terms “parking cash-out” or “cash allowance,” since the law does not require use of these designations.

- *How can cash-out work for employees who commute by an alternate mode on a part-time basis?*

Many employers have developed successful transportation demand management programs by rewarding part-time, as well as full-time, use of alternate commute modes. One of the ways parking cash-out can compliment this type of program is by providing for “shared” parking spaces. Just as two employees can team up to carpool and cash-out one parking space, two employees who use alternate modes on a part time basis can coordinate that use, share one parking space and cash-out the other. (Example: One employee telecommutes on Monday and Friday, another employee commutes by bus on Tuesday through Thursday. They share one parking space and cash-out the other.)

- *I have multiple work sites, with some parking subject to cash-out and some exempt. I wish to implement a uniform commute cash reward program for all employees based on the amount of alternate mode use. How do I ensure compliance with the cash-out law?*

You can ensure compliance if your monthly cash reward for full-time use of an alternate commute mode is at least equal to the average monthly subsidy of your parking spaces subject to cash-out.

Eliminating Subsidized Parking

- *What if I discontinue parking subsidies? Is this a way to comply with the law?*

Yes. The law was enacted to help balance existing local, state, and federal policies that tend to encourage subsidized parking. So if you stop subsidizing parking, you are no longer subject to the law. Studies show that paid parking has about the same impact on reducing solo driving as providing a cash allowance.

Some employers have balanced employee compensation by replacing subsidized parking with travel allowances, providing all employees with a choice of how to use their commute subsidy. Other employers have reduced parking subsidies slightly to help defray the costs of the parking cash-out program.

Contacts

- *Who can I call with questions about the parking cash-out program?*

You may contact Air Resources Board staff person Dennis Wade at (916) 327-2963. Written inquiries should be sent to Air Resources Board, Parking Cash-Out, Air Quality and Transportation Planning Branch, P.O. Box 2815, Sacramento, California 95812. Your local air district, ridesharing organization, or transportation management agency may also be able to answer your questions.

Eligibility Checklist

Determine what parking is subject to cash-out. Employees are eligible for the parking cash-out offer if they are currently using the parking or it is available to them.

Parking

(subject to cash-out if all items checked)

- Subsidized
- Not owned
- Can calculate how much it costs
- Not a vanpool or carpool space
- If leased, lease allows the reduction of parking spaces without penalty

Employee

(eligible if one item checked)

- Is using the parking
- Is offered the parking (now or in the future)
- Previously offered the parking but declined, but parking is still available

Parking Cash-Out Program Employer Questionnaire

Employers answering “yes” to all of the following questions are subject to the parking cash-out law. Employers answering “no” to one or more questions are currently exempt.

	<u>Yes</u>	<u>No</u>
<p>1. Do you employ over 50 persons (regardless of how many work sites)?</p> <p>- Persons are considered “employees” for purposes of parking cash-out if they are considered employees for unemployment insurance, state or federal tax purposes. (For a legal reference, see the definition of “employee” in Sections 621 and 621.5 of the Calif. Unemployment Insurance Code.)</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>2. Are any of your work sites located in an air basin designated nonattainment for any state air quality standard?</p> <p>- The answer is “yes” if any of your work sites are in a county other than Lake County.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>3. Do you subsidize employee parking?</p> <p>- A “yes” means you pay all or part of the cost of parking for any employee.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>4. Do you subsidize any employee parking on property that you do not own?</p> <p>- Parking spaces owned by employers are exempt from parking cash-out.</p> <p>- In most cases a “yes” answer means you subsidize employee parking that you lease. But reimbursing an employee on a regular basis for his/her commute-related parking costs in a lot that you neither own nor lease is also a parking subsidy subject to cash-out.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>5. Can you calculate the out-of-pocket expense of the parking subsidies you provide?</p> <p>- A “yes” answer for leased parking means your parking costs are separated in your lease agreement, and/or you claimed parking as a separate itemized business expense on your state or federal tax returns.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>6. Can you reduce the number of parking spaces in any of your leases without penalty?</p> <p>- If reducing the number of parking spaces would cause you to (1) continue to pay for unused spaces, (2) violate local planning regulations, or (3) break the lease, then the answer is “no.” If not, then the answer is “yes.”</p>	<input type="checkbox"/>	<input type="checkbox"/>