

H-2A Transportation Compliance Using Vanpools Provided by the California Vanpool Authority

The California Vanpool Authority (CalVans) is a public transit agency providing public vanpools to those employees electing to commute to work in a non-profit manner; this includes agricultural workers and non-agricultural workers. The service provided by CalVans is recognized by local, state and federal agencies as a safe and cost effective method of getting to work in a shared ride vehicle.

The following sections set forth CalVans' compliance with federal and state laws governing vanpools:

- CalVans (common carriers) are not subject to the MSPA
- Vanpools (employee carpools) as defined in MSPA
- CalVans is exempt from PUC Regulations
- Use of employee sponsored Vouchers
- CalVans vanpools are operated by volunteer drivers
- CalVans Vanpools have the following safety features
- (CVC) Section 34509 defines a vanpool and required equipment
- CalVans vanpools are not farm labor vehicles as defined CVC Section 322(c) (2)
- CalVans provides the following items or services to insure the safety of its program

CalVans (common carriers) are not subject to MSPA:

Part 29, Federal Code of Regulations, section 500.30(c) of MSPA defines the exemption for a "common carrier" to be any common carrier which would be a farm labor contractor solely because the carrier is engaged in the farm labor contracting activity of transporting any migrant or seasonal agricultural worker. A "common carrier" by motor vehicle is one which holds itself out to the general public to engage in transportation of passengers for hire, whether over regular or irregular routes, and which holds a valid certificate of authorization for such purposes from an appropriate local, State or Federal agency.

Vanpools (employee carpools) as defined in MSPA:

Under MSPA regulations, employee carpooling is a voluntary arrangement among workers for transportation to and from work using a worker's own vehicle. The workers may contribute to offset the costs of the transportation to reasonably reflect the actual costs of the transportation. Any compensation or other valuable consideration in excess of the actual costs means the transportation provider is considered a farm labor contractor and thereby subject to the registration and transportation requirements of the Act and the regulations. Likewise, any arrangement in which a farm labor contractor participates will not be considered a carpool. Also,

if any agricultural employer or association directs or requests such transportation arrangements or provides money or other valuable consideration (other than the travel advances discussed below) for the transportation service, such an arrangement is not a valid employee carpooling arrangement.

CalVans is exempt from PUC Regulations:

Public Utilities Code Section 5353 (e) (f) (b) (h) state:

5353. This chapter does not apply to any of the following:

(e) Transportation service rendered by a publicly owned transit system.

(f) Passenger vehicles carrying passengers on a noncommercial enterprise basis.

(h) Transportation of persons between home and work locations or of persons having a common work-related trip purpose in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver. This exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. "Profit," as used in this subdivision, does not include the recovery of the actual costs incurred in owning and operating a vanpool vehicle, as defined in Section 668 of the Vehicle Code.

Use of employer sponsored Vouchers:

Because CalVans is a public transit agency, employers may offer vouchers for part or all of the riders' weekly vanpool fare. Presently the IRS allows an employer to offer up to \$245 a month towards a worker's commute. CalVans collects vouchers from riders and then bills those employers for the value of the vouchers redeemed by their employees. Revenue Code (IRC), Section 132(f) permits an employer to subsidize employees' cost of commuting to work by a public transit entity.

CalVans vanpools are operated by volunteer drivers who:

Have a valid driver's license;

Have at least 3 years of driving experience;

Have successfully passed a Class "B" physical within the past 2 years; and

Have not been convicted of drunk or reckless driving in the past 5 years

California Vehicle Code Section 12804.9 (G) (j) defines Van pool driver requirements:

A driver of a vanpool vehicle may operate such vehicle with a Class "C" license, but shall possess evidence of a medical examination required for a Class "B" license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit-and-run offense in the past five years.

CalVans Vanpools have the following safety features:

Inspection and service every 6,000 miles or 6 months, whichever comes first
\$10,000,000 insurance coverage
GPS for monitoring location and speed
Requirement that driver log on with unique ID before vehicle will start.

(CVC) Section 34509 defines a vanpool and required equipment:

34509. Vanpool vehicles, as defined in Section 668, and vanpool vehicles when used for purposes other than traveling to and from a work location and transporting more than 10 but less than 15 persons including the driver, shall be exempt from the regulations adopted pursuant to Section 34501, except that the following shall apply:

(a) The vanpool vehicle shall be equipped with an operable fire extinguisher which is of the dry chemical or carbon dioxide type with an aggregate rating of at least 4-B:C and which is securely mounted and readily accessible.

(b) The vanpool vehicle shall be equipped with a First-aid kit, conforming to the minimum requirements for schoolbuses. First-aid kits shall be readily visible, accessible, and plainly marked "First Aid Kit."

(c) The vanpool vehicle shall be regularly and systematically inspected, maintained, and lubricated in accordance with the manufacturer's recommendations, or more often if necessary to ensure the safe operating condition of the vehicle. The maintenance shall include, at a minimum, an in-depth inspection of the vehicle's brake system, steering components, lighting system, and wheels and tires, to be performed at intervals of not more than every six months or 6,000 miles, whichever occurs first.

(d) Operators of vanpool vehicles shall document each systematic inspection, maintenance, and lubrication and repair performed for each vehicle under their control. Required records shall include services performed, the person performing the service, the date, and the mileage on the vehicle at the time of the repair. The records shall be maintained with the vehicle for one year, and shall be presented upon demand to any authorized representative of the California Highway Patrol.

(e) Vanpool vehicles being operated pursuant to the exemptions specified in this section shall display, upon the rear and sides of the vehicle, a sign or placard, clearly visible and discernable for a distance of not less than 50 feet, indicating that the vehicle is being used as a vanpool vehicle.

CalVans vanpools are not farm labor vehicles, CVC Section 322(c) (2):

(c) A "farm labor vehicle" does not include:

(2) Any vehicle while being operated under specific authority granted by the Public Utilities Commission or under specific authority granted to a transit system by an authorized city or county agency.

CalVans provide the following items or services to insure the safety of its program:

- Driver licenses are added to the Department of Motor Vehicle Pull Notice Program, allowing for notification if a driver received a citation.
- Drivers are only allowed to travel between home and work.
- Vehicles are equipped to safely carry tools and water containers.
- CalVans Staff is available 24/7 for repairs and to replace vehicle if needed.
- GPS system tracks mileage for preparation of weekly bill.