



San Francisco Health Care Security Ordinance

HCSO Goes Into Effect

The Employer Spending Requirement (ESR) of the new San Francisco Health Care Security Ordinance (HCSO) was challenged in federal courts which delayed the initial January 1, 2008 effective date. Pending the appeal, the Ninth Circuit Court of Appeals has granted the City's Emergency Motion for a Stay of the court's decision. Until the courts reach a decision on the appeal, the City's program for health benefits for thousands of the City's residents and workers is going forward effective January 9, 2008.

Covered Employers

A "covered employer" is an employer who does business in the City of San Francisco and is subject to the City's business registration requirements. For-profit employers with 20 or more employees and non-profit employers with 50 or more employees must meet the expenditure requirements for those employees who work within the geographic area of the City or County of San Francisco and who meet the eligibility requirements defined by the HCSO. The determination of number of employees is independent of where employees live or work.

All employers with 50 or more employees must comply as of 1/1/08. For-profit employers with 20 to 49 employees are subject to the ordinance as of 4/1/08.

HCSO Provisions

The HCSO requires covered employers to make health care expenditures for each covered employee, and mandates the creation of a City-sponsored Health Access Program (HAP) referred to as "Healthy San Francisco", a network of health care providers who will deliver medical services to San Francisco uninsured and under-insured residents who meet the eligibility guidelines of the program. The City will additionally arrange for medical reimbursement accounts for persons working in San Francisco who do not meet the eligibility requirements of "Healthy San Francisco".

Covered Employees

Covered employers must make minimum health care expenditures for any employee who 1) has been employed for 90 calendar days or more, 2) is covered

by the City's minimum wage law, 3) has worked at least 10 hours in a particular week, and 4) works within the geographic boundaries of the City and County of San Francisco. The weekly hours worked decreases to 8 hours per week effective January 1, 2009. Eligibility for employees who work variable hours each week will be based on the average number of hours worked per week during the calendar quarter.

Managerial, supervisory or confidential employees who earn at least \$74,558 annually are exempt from HCSO, as are employees eligible to receive Medicare, TRICARE/CHAMPUS benefits, trainees in a bona fide training program, and employees who sign a HCSO waiver stating they have coverage under another employer's plan.

Required Expenditures

Covered employers must make minimum health care expenditures on behalf of each covered employee within 30 days of the end of each calendar quarter. The minimum amount is based on the employer's size. Effective January 9, 2008, employers with 100 or more employees must spend \$1.76 per hour worked for each covered employee and employers with 50-99 employees must spend \$1.17 per hour. Additionally, employers with 20-49 employees will have to spend \$1.17 per hour worked effective April 1, 2008. The rates will increase on January 1, 2009 from \$1.76 to \$1.85, and from \$1.17 to \$1.23. After 2009, expenditures will be determined annually based upon the average contribution for a full-time employee to the City health service system.

The amount the employer is required to spend is determined on a calendar quarter basis and is determined by multiplying the applicable employer expenditure rate times the employee's total number of hours worked in San Francisco up to 172 hours per month or 516 hours in a quarter. Exempt employees are deemed to work 40 hours per week. Vacation, PTO, and sick hours are counted as hours worked. If the employer provides uniform health coverage, or coverage under a self-insured plan, the spending requirement is met if the average expenditure per employee meets the applicable expenditure rate.

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Expenditure Methods

Employers can meet the minimum expenditure requirements in various ways, and may combine options such as;

- Providing a group health insurance program,
- funding a health savings or reimbursement account for each employee,
- direct reimbursement to the employee for their health costs,
- paying a third party to provide health care services to covered employees, or
- making payments to the City-sponsored HAP program and/or medical reimbursement accounts.

Each expenditure must be for medical care, services, or goods that qualify as tax deductible medical expenses under section 213 of the IRS Code.

Employer Recordkeeping

Employers must maintain itemized pay statements on each HCSO-eligible employee showing each employee's dates of employment, hours worked, wages earned, and residence information as well as proof of the health care expenditures made each quarter on behalf of the employee. Records must be kept for a minimum of four years.

For 2007 calendar year and annually thereafter, employers must complete an HCSO Mandatory Annual Reporting form documenting the information related to their health care expenditures. Reporting for 2007 will be based on employers' voluntary business practices and must be submitted no later than April 30, 2008.

Enforcement and Penalties

The Office of Labor Standards Enforcement (OLSE) will assess administrative penalties for non-compliance. Failure to meet expenditure requirements will be subject to a penalty of up to \$1,000 for each employee for each week that expenditures were not made, plus up to 10% interest. Additionally, civil action and other legal remedies may apply.

HCSO makes it unlawful for an employer to reduce the number of employees to avoid being classified as a covered employer or to lower its expenditure rate. Employers are also prohibited

from retaliating against persons who inquire about or act to enforce the ordinance, or discriminating against any person based on the persons eligibility or possession under other health insurance.

Action for Compliance

Employers who do business in the City of San Francisco and who have employees meeting the requirements for HCSO expenditures should immediately determine the applicable effective date and spending rate for each covered employee and begin planning whether they already meet the spending requirement through company programs or whether a compliance plan must be developed and implemented.

Sources of Additional Information

Information and downloadable documents about HCSO are available on the following sites:

OLSE website:

http://www.sfgov.org/site/olse_index.asp?id=45168

Frequently Asked Questions:

<http://www.sfgov.org/site/uploadedfiles/olse/hcso/HCSO%20FAQs,%20released%2012-7-2007.pdf>

Flow Chart of Steps to Calculate the Minimum Expenditure Requirement:

<http://www.sfgov.org/site/uploadedfiles/olse/hcso/Steps%20to%20Calculate%20HCE%20flowchart.pdf>

Employee Voluntary Waiver Form (English):

<http://www.sfgov.org/site/uploadedfiles/olse/hcso/Employee%20Voluntary%20Waiver%20Form.pdf>

See the OLSE website for Spanish & Chinese forms

Registration information for Healthy San Francisco:

<http://www.healthysanfrancisco.org/>

For more information, call 554-7892 or e-mail

HCSO@sfgov.org

Contact your Andreini & Company representative to discuss options your company may have to meet the expenditure requirements of the HCSO ordinance.