

San Francisco Health Care Security Ordinance

The Bottom Line

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As you may already be aware, the City of San Francisco passed a "Health Care Security Ordinance" (HCSO) on February 18, 2006. The intent of this ordinance is to ensure that all individuals who WORK in San Francisco have access to affordable health care by requiring businesses to make reasonable health care expenditures (HCE) on behalf of their covered employees.

There has been some legal wrangling back and forth since November 2006, but on January 9, 2008, the Court of Appeals essentially approved the ordinance and its requirements to move forward. The next hearing on the appeal is April 17, 2008. In the meantime, the **effective date** for employers who have employees working in San Francisco is **April 1, 2008**.

You are considered as a "covered employer" if, among other things, you engage in business within the City and are required to obtain a valid San Francisco business registration certificate. In other words, regardless of where the employer is located, ALL persons performing work for the employer are counted toward determination of whether or not you are a covered employer.

Following are answers to frequently asked questions:

Who is considered a "covered employee"?

A covered employee is any person who:

- Has been employed for at least 90 calendar days
- Performs at least 10 hours of work per week within San Francisco (the hours requirement will drop to 8 hours/week in 2009)
- Works on a part-time or temporary basis

Which employees are exempt from coverage?

Employees exempt from coverage are:

- Employees who sign a Voluntary Waiver Form verifying that they are receiving health care from another employer and that s/he voluntarily waives the right to have his/her current employer make an HCE for his/her benefit

- Managers or supervisors earning more than \$76,851 annually in 2008
- Employees who are covered by Medicare or Tricare/Champus

What qualifies as a "Health Care Expenditure" (HCE)?

An HCE is an amount paid by a covered employer to its covered employees, or to a third party on behalf of its covered employees for the purpose of providing health care services or reimbursing the cost of such services, i.e., medical, dental or vision.

How is the HCE calculated?

The HCE is calculated by multiplying the total number of hours paid to the employee by the applicable HCE rate (see chart below). "Hours paid" includes both the hours for which a person is paid wages AND the hours for which a person is entitled to be paid wages such as vacation hours, paid time off and paid sick leave hours. Also, there is a ceiling/cap of 172 hours paid per month.

| Business Size | | January 9, 2008 | April 1, 2008 | January 1, 2009 |
|---------------|-----------------|-----------------|---------------|-----------------|
| Large | 100+ Employees | \$1.76/hour | | \$1.85/hour |
| Medium | 50-99 Employees | \$1.17/hour | | \$1.23/hour |
| | 20-49 Employees | N/A | \$1.17/hour | |
| Small | 1-19 Employees | N/A | | |

**Non-profits with less than 50 EEs are exempt from the spending requirement*

When must the HCE be made?

Calculations must be made and expended at least quarterly, within 30 days after the end of the preceding quarter. (So, for the quarter ending March 31, 2008, your calculation and expenditure is due by April 30, 2008.)

Does the calculation need to be made for each employee?

Yes, to ensure that the required expenditure is made for each employee, subject to two exceptions:

- Uniform health coverage plans
- Self-insured/self-funded plans

(Continued...)

What are the rules when providing uniform coverage or when the employer has a self-insured/self-funded plan?

- Covered employers will be deemed to comply with the Employer Spending Requirement (ESR) if the actual average hourly expenditure rate per employee meets or exceeds the expenditure rate required under the Ordinance.
- There are two options to determine whether the rate meets the ESR :
 1. Calculate the actual average hourly expenditure rate by dividing the total amount of health care expenditures made for employees by total number of hours paid to such employees.
 2. Calculate the average hourly expenditure rate by dividing the monthly premium or the "COBRA equivalent" rate, minus any employee contributions, by 172 hours.

What if the health insurance premiums that you currently pay for an employee do not reach the minimum amount required by the Ordinance?

Employers must make the FULL expenditure required by law; thus, if the monthly premium paid by the employer does not meet the minimum expenditure amount, it must make up the shortfall. It is up to the employer to decide how to make up the shortfall; it may do so by reducing the employees' share of the premiums for the existing plan, choosing a more generous plan with higher premiums, complementing the existing plan with a health spending or medical reimbursement account, making payments to the City (which will then be used to set up a Medical Reimbursement Account for the Covered Employee), or making other expenditures that qualify as health care expenditures within the meaning of the Ordinance.

Additional employer responsibilities:

- Notice to Employee/City Option Deposit Confirmation
- Recordkeeping: Employers must retain records for a period of four years, including items such as itemized pay statements, records and calculations of health care expenditures and signed Voluntary Waiver Forms.
- Annual Reporting Requirement (penalty assessed if not provided)
- Cooperation with investigations and audits

Where can you get more information?

- Office of Labor Standards Enforcement: www.sfgov.org/olse/hcso

- Department of Public Health/San Francisco Health Plan: www.HealthSanFrancisco.org

WHAT YOU NEED TO DO NOW

- Review the website for more in-depth information (www.sfgov.org/olse/hcso).
- Determine the covered employees working in San Francisco in accordance with the definitions of a covered employee.
- Set up a procedure for calculation of the information required and perform the calculation on a quarterly basis. You will need that information to complete the annual reporting form later.
- Depending on the results of your calculation, you may need to make your HCE to covered employees quarterly.
- Decide whether to provide the Employee Voluntary Waiver Form to affected employees, although an employee can obtain the form on their own without your intervention as it is voluntary. It can be found at the following site: <http://www.sfgov.org/site/uploadedfiles/olse/hcso/EmpVolWaiverEN.pdf>.
- Although the Office of Labor Standards Enforcement has determined that submission of the 2007 Annual Reporting Form is voluntary, they are encouraging employers to complete it and send it in, *but you are not required to do so this first year*. However, you may take a look at a sample of it at the following site: <http://www.sfgov.org/site/uploadedfiles/olse/hcso/AnnRptrFormWtrmrk.pdf>. It is important to note that you *cannot* copy the form and submit it as they are scannable for tabulation purposes.
- You will receive an Annual Reporting Form sent by the Office of Labor Standards Enforcement each year mailed directly to employers. Although the mailing should be completed in December 2008, it is possible that you may not receive the form until January 2009. Be on the lookout for this form and advise any other appropriate departments who might receive this form in error so that it is forwarded to you in a timely manner. There are further instructions if you do not receive the form at the following website: <http://www.sfgov.org/site/uploadedfiles/olse/hcso/Employee%20Reporting%20FAQs%20&%20Instructions%20for%202007.pdf>.

Should you have any questions, please contact your Laurus Strategies Client Manager.

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