



Compliance Alert

2019 Health FSA Limit Projection, New SF HCSO Amounts, and More Fall Updates

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2019 Health FSA Salary Reduction Limit Likely to Increase to \$2,700

ABD is projecting that for plan years beginning on or after January 1, 2019, the health FSA salary reduction contribution limit will increase to \$2,700 (up from \$2,650 currently). Our projection shows an inflation increase of \$229.12 (from the initial \$2,500 limit in 2013). By law, the increase is rounded to the next lowest multiple of \$50, which in this case will be an increase of \$200 from the initial \$2,500 limit.

The increase will not be official until the IRS releases its annual inflation-adjusted limits. The IRS issues those numbers in a Revenue Procedure document that typically comes out in late October. Last year, [the release date was October 19](#). Stay tuned.

As a reminder, employer contributions (including non-cashable flex credits) cannot exceed \$500 per plan year for the health FSA to maintain excepted benefit status. Non-excepted health FSAs generally cannot comply with the ACA market reform mandates. Therefore, in almost all cases the maximum health FSA amount available to an employee for plan years beginning on or after January 1, 2019 will be limited to \$2,700 (max employee salary contribution) + \$500 (max employer contribution, if offered) = \$3,200 (combined). This assumes the projected increase to \$2,700 for next year is confirmed by the IRS.

Also remember that your health FSA eligibility will need to be no broader than your major medical plan eligibility in order to maintain excepted benefit status (as required by the ACA). In other words, the health FSA should never be available to an employee who is not also eligible (regardless of enrollment) for your major medical plan.

2018 San Francisco Health Care Security Ordinance (HCSO) Health Care Expenditure Rates

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The San Francisco Office of Labor Standards Enforcement (OLSE) also [recently released](#) the updated 2019 HCSO required health expenditure rates.

Under the HCSO, employers with 20 or more employees (50 or more for non-profits) are required to make a minimum level of health care expenditures for certain employees performing work in San Francisco.

- **The new 2019 rates:**

Employer Size	2018 Rate	2019 Rate	172 Hours/Month Maximum
Large: 100+ Employees	\$2.83/hour payable	\$2.93/hour payable	\$503.96/month \$1,511.88/quarter
Medium: Business w/ 20-99 Nonprofit w/ 50-99	\$1.89/hour payable	\$1.95/hour payable	\$335.40/month \$1,006.20/quarter
Small: Business w/ 0-19 Nonprofit w/ 0-49	Exempt	Exempt	Exempt

More information on all of these requirements is available on the [OLSE's HCSO website](#). Also, see our ABD Office Hours webinar [The Health Care Security Ordinance: A Refresher Course in the HCSO Basics for SF Employers](#) (full recording link on the title slide) for a complete overview of the HCSO requirements for employers.

More Fall Reminders

- **Medicare Part D:** The Medicare Part D Notice of Creditable (or Non-Creditable) Coverage is due to employees by October 15. Employers frequently bundle this with other required annual notices, such as the CHIP and WHCRA notices. [See here for more details.](#)
- **Form 5500:** The Form 5500 filing due date for calendar-year plans that filed for the 2½-month extension is October 15. [See here for more details.](#)
- **ACA Reporting:** The IRS recently issued the draft 2018 Forms [1094-C](#) and [1095-C](#) for employer ACA reporting, as well as draft [updated instructions](#). The draft forms remain essentially unchanged from 2017. It is not clear whether the Trump administration will again delay the applicable deadlines or continue the previous years' good faith enforcement safe harbor. [See here for more details.](#)

- **ACA Premium Tax:** Another one-year moratorium on the ACA health insurance premium tax for fully insured medical policies [will kick in for 2019](#). The fee previously had a one-year moratorium in 2017, but it was back in effect for 2018. The tax was estimated to add two to three percentage points to the 2018 premium cost. [See here for more details](#).
- **ACA Pay or Play Penalties:** The 2018 employer mandate pay or play penalties are currently \$2,320 (the Section 4980H(a) “A Penalty”) and \$3,480 (the Section 4980H(b) “B Penalty”) annualized. The IRS has not announced updated 2019 penalty amounts, but projections are for the A Penalty to increase to \$2,500 and the B Penalty to increase to \$3,750. [See here for more details](#).
- **ACA Pay or Play Affordability:** The 2019 affordability safe harbor percentage makes a significant increase from 9.56% to 9.86%. This sets the federal poverty line affordability safe harbor at a \$99.75 maximum monthly employee-share of the premium for the lowest-cost plan option at the employee-only tier. [See here for more details](#).

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