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next steps



ABD Office Hours

The San Francisco
Health Care Security
Ordinance:

Webinar Series

A Refresher Course in the HCSO
Basics for SF Employers

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[Recording](#)

The Big Picture

The HCSO generally requires employers with 20 or more employees (50 or more for non-profits) to make a minimum level of health care expenditures for employees performing at least eight hours of work per week in San Francisco.

Employer Size	2014 Rate	2015 Rate
Large: 100+ Employees	\$2.44/hour payable	\$2.48/hour payable
Medium: Business w/ 20-99 Nonprofit w/ 50-99	\$1.63/hour payable	\$1.65/hour payable
Small: Business w/ 0-19 Nonprofit w/ 0-49	Exempt	Exempt

Covered Employers



Covered Employers

An employer is covered by the HCSO for any calendar quarter if it meets the following three conditions:

- **Employs one or more workers within the geographic boundaries of the City and County of San Francisco;**
- Is required to obtain a valid San Francisco business registration certificate pursuant to Article 12 of the Business and Tax Regulations Code, and
- Is a **for-profit business with 20 or more persons performing work** or a **nonprofit organization with 50 or more persons performing work.** This includes all persons working for the entity, **regardless of whether they are located in San Francisco or outside of the city.**



Covered Employees

An employee is covered by the HCSO if s/he works for a Covered Employer and:

- Is entitled to be paid the minimum wage,
- Has been employed by his or her employer for at least 90 calendar days,
- **Performs at least 8 hours of work per week within the geographic boundaries of San Francisco, and**
- Does not meet one of the five exemption criteria.



Five Categories of Exempt Employees

1. Employees **who voluntarily waive** their right to have their employers make Health Care Expenditures for their benefit.
2. Employees who qualify as **managers, supervisors, or confidential employees** AND earn more than the applicable salary exemption amount (**2015: \$90,745 salary, \$43.63 hourly**)
3. Employees who are covered by Medicare or TRICARE (the health care program serving Uniformed Service members, retirees and their families). In order to claim these exemptions, an employer must be able to document employee eligibility.
4. Employees who are employed by a non-profit corporation for up to one year as trainees in a bona fide training program consistent with federal law.
5. Employees who receive health care benefits pursuant to the San Francisco Health Care Accountability Ordinance (HCAO).

Exempt Categories: The HCSO Voluntary Waiver Form

- If an employee is receiving health care benefits through another employer, s/he is permitted to sign an Employee Voluntary Waiver Form (available in multiple languages).
- The Waiver verifies that the employee is receiving health care benefits through another employer (such as a spouse's, domestic partner's or parent's employer) and that s/he **knowingly and voluntarily waives the right to have his/her current employer make Health Care Expenditures on his/her behalf.**
- The Employee Voluntary Waiver form developed by the OLSE is intended to ensure that the employee understands his/her rights under the HCSO, so that the waiver is a knowing and voluntary one.
- An employee waiver is effective on the date it is signed (can't be retroactive) and is **valid for one year.**
- **Other forms provided by third-party vendors and health insurance carriers cannot be used in lieu of the City's Employee Voluntary Waiver form.**

The HCSO Voluntary Waiver Form

EMPLOYEE VOLUNTARY WAIVER FORM

Updated October 30, 2014

ATTENTION EMPLOYEES

- You do not have to sign this form. It is unlawful for your employer to pressure you to sign this form. It is your choice—there is absolutely no requirement that you sign this form.
- It is important that you read both pages of this form.
- If you have any questions about this form or your employer's obligations under the Health Care Security Ordinance, please call 554-7892 or visit www.sfgov.org/olse/hcso. Para asistencia en Español, llame al 554-7892. 需要中文幫助, 請電 554-7892.

The San Francisco Health Care Security Ordinance requires your employer to make health care expenditures on your behalf. A health care expenditure is an amount of money paid by your employer for the purpose of providing you with access to health care services. For example, your employer may:

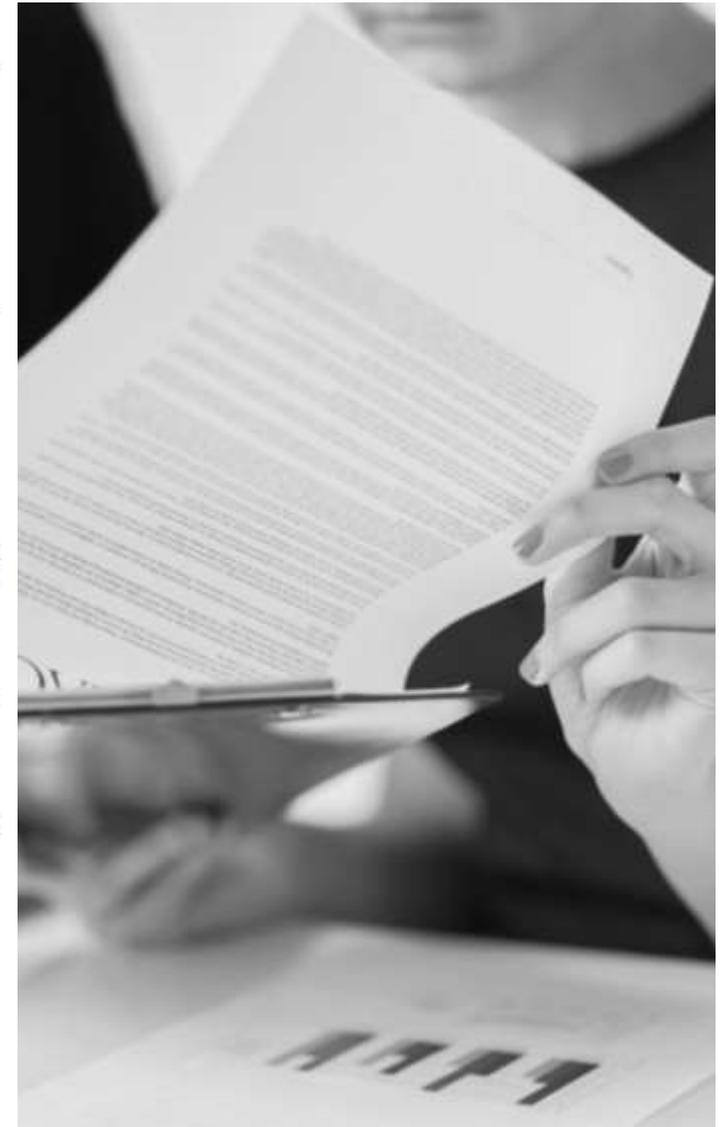
- make payments to enroll you in a health insurance program,
- reimburse you for the costs of health care services you get on your own,
- make payments on your behalf to the City's *Healthy San Francisco* program, or
- Establish and maintain a reimbursement account for your health care expenses.

Your employer may request a waiver from this legal requirement if you are currently receiving health care services from another employer. To support a waiver request, your employer must obtain a signed Voluntary Waiver Form from you each year, updated as necessary to reflect any changes to the information provided.

Even if you receive health care services through another employer, either as an employee of that other employer or by virtue of being the spouse, domestic partner, or child of a person employed by that employer, you are entitled to receive health care services from this employer also. If you sign this form, your employer asking for this waiver may stop making a mandatory health care expenditure on your behalf. **If you want your employer to provide you with access to health care services, do not sign this form.**

You have the right to cancel or revoke this voluntary waiver at any time. Your revocation must be submitted in writing. If you revoke this waiver, your employer listed below will be required to make health care expenditures on your behalf.

Employee Contact Information	Employer Contact Information
Name:	Company Name:
Home Address:	Employee Worksite Address:
Tel:	Contact Person:
Email:	Tel:



Exempt Categories: Managerial, Supervisory, Confidential Employees

Employees who qualify as **managers, supervisors, or confidential employees** AND earn more than the applicable salary exemption amount (2015: \$90,745 salary, \$43.63 hourly rate)

- **Managerial employee:** an employee who has authority to formulate, determine, or effectuate employer policies by expressing and making operative the decisions of the employer and who has discretion in the performance of his/her job independent of the employer's established policies.
- **Supervisory employee:** an employee who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend any such action, if the exercise of this authority or responsibility is not of a merely routine or clerical nature, but requires the use of independent judgment.
- **Confidential employee:** an employee who acts in a confidential capacity to formulate, determine, and effectuate management policies with regard to labor relations, or regularly substitutes for employees having such duties.

Expenditures



Qualifying Expenditures

All of the following examples meet the requirements of the HCSO:

- **Payments to a third party to provide health care services for the Covered Employee, such as payments for medical, dental, or vision insurance, or payments to a health care provider;**
- **Payments on behalf of the Covered Employee to the City Option;**
- Contributions on behalf of the Covered Employee to a reimbursement program (subject to a number of complex ACA and HCSO limitations);
- Payments to the Covered Employee to reimburse the employee for costs incurred in the purchase of Health Care Services; and,
- Costs incurred by the employer in the direct delivery of health care services for the Covered Employee.

Payments made directly or indirectly for workers' compensation or Medicare benefits do not qualify as health care expenditures.

Calculating Health Insurance Expenditures

General Rule:

- Health care expenditures must be calculated separately for each covered employee

Averaging Exception:

(a) Divide the total monthly premium paid (use COBRA rate minus 2% admin fee for self-funded) for all employees covered by the uniform plan by the total number of employees covered by that plan, then

(b) Divide that number by 172 hours paid (“hours paid” per employee is capped at 172 hours in a single month).

- The employer has the option of including only those employees covered by the HCSO or including all employees participating in the uniform plan, provided that all such employees receive the same health coverage or product.
- Must perform a separate averaging for each “uniform plan” option (e.g., HMO low, HMO high, HDHP, PPO, etc.)



Example #1

- Employer offers group health plan coverage
- HCSO covered employee is eligible for the plan, but...
- The employee declines enrollment
 - Maybe because the employee is already covered through a spouse or parent

Has the employer satisfied its HCSO expenditure requirement?

Answer: No! (unless the employee signed the HCSO waiver)

A Covered Employer that establishes or maintains a health insurance program that requires contributions by a Covered Employee must do more than offer the Covered Employee an opportunity to participate in such a program. **If the employee declines to participate in such a program, the employer must satisfy its Employer Spending Requirement in some other manner.**

Example #2

- Employer offers group health plan coverage
- HCSO covered employee is not eligible for the plan
 - For example, the employee works only 8 hours per week
 - Employer plan eligibility set at 30 hours per week

Has the employer satisfied its HCSO expenditure requirement?

Answer: No! (unless the employee signed the HCSO waiver)

Q: I currently provide benefits to all full-time employees, but only provide benefits to part-time employees who work more than 20 hours per week. Does the HCSO require me to do more?

A: Probably. Employers are required to make minimum Health Care Expenditures for all Covered Employees working at least eight hours per week in San Francisco.

Example #3

- Employer offers group health plan coverage
- HCSO covered employee is eligible for the plan, but...
- Employer share of the premium for the employee's coverage is less than the HCSO hourly expenditure rate (either on an individualized basis, or under the averaging approach)

Has the employer satisfied its HCSO expenditure requirement?

Answer: No! (unless the employee signed the HCSO waiver)

- If the amount spent does not meet the minimum expenditure amount set by the HCSO, the Covered Employer must decide how it will spend the difference.
- The employer could choose a health insurance plan that provides more comprehensive benefits, such as dental and visions benefits, or increase its contribution towards the health care premiums while decreasing the portion paid by the employee.
- **Another way to spend the remainder of the minimum spending requirement is to contribute to the City Option to create a Medical Reimbursement Account for the Covered Employees.**

Expenditures Due Date

Health Care Expenditures must be made each quarter, **within 30 days of the end of the preceding quarter.**

FIRST QUARTER

January 1 – March 31

SECOND QUARTER

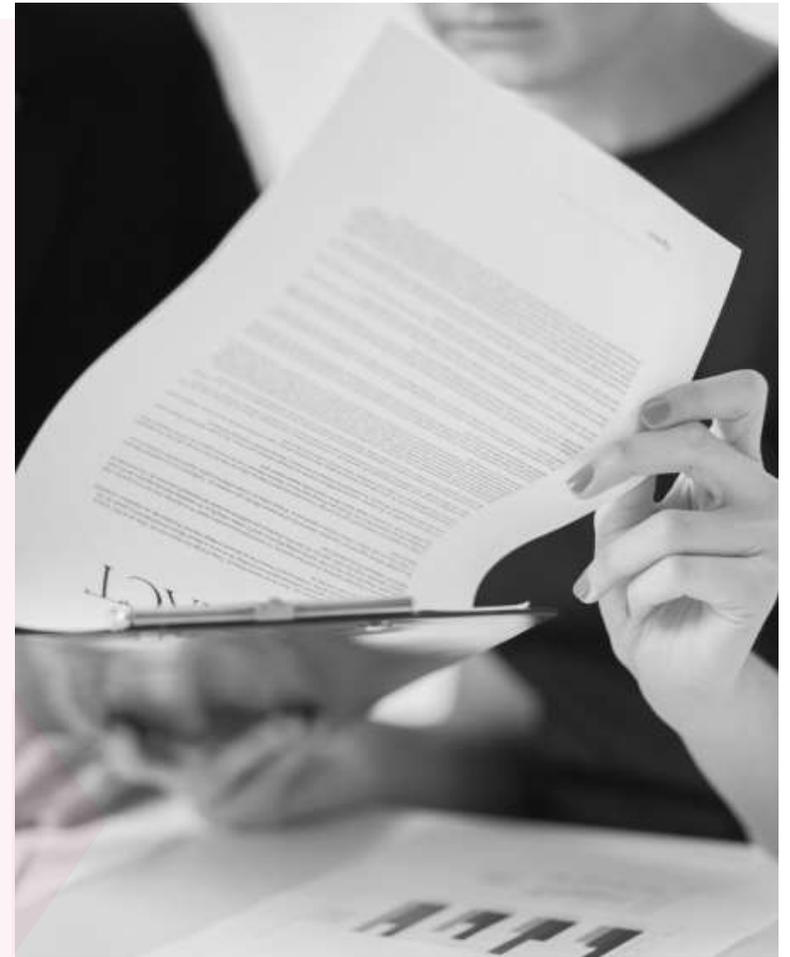
April 1 – June 30

THIRD QUARTER

July 1 – September 30

FOURTH QUARTER

October 1 – December 31



The City Option



Medical Reimbursement Accounts (MRAs)

The employer's contribution is deposited in an irrevocable reimbursement account. Employees can obtain reimbursements from their MRAs for a full range of medical, dental, vision expenses, including reimbursements for the cost of insurance premiums.

Healthy San Francisco

If an employee is eligible for Healthy San Francisco (HSF), the employer's payment may be applied towards the Employee's HSF enrollment, and the employee may receive a discount on Healthy San Francisco program participation fees. To be eligible for HSF, the employee must live in San Francisco, s/he must be uninsured, and s/he must not qualify for public health insurance programs (such as Medi-Cal).

Irrevocable Expenditures

Recent HCSO changes also require that all employer health care expenditures be irrevocable (e.g., not HRA contributions) with a three-year phase-in process:

2015: At least 60% of the required health care expenditures are irrevocable

2016: At least 80% of the required health care expenditures are irrevocable

2017: 100% of the required health care expenditures are irrevocable

A few examples of Irrevocable Expenditures include:

- Payments to an insurance provider for medical, dental, or vision insurance premiums
- Contributions to the City Option; and
- Contributions to HSAs

Requirements



Employee Notice Requirement

Every **Covered Employer** must post the **Official OLSE Notice** in a conspicuous place at any workplace or job site where any Covered Employee works.

- Covered Employers must post the Official OLSE Notice. Drafting and posting a different version will not satisfy the requirement of the law.

Every **Covered Employer** is required to post the **Official Notice** in English, Spanish, and Chinese.

- The front of the Official OLSE Notice includes these three languages.
- Every Covered Employer must also post the Official Notice in any other language spoken by at least five percent of the employees at the workplace or job site.

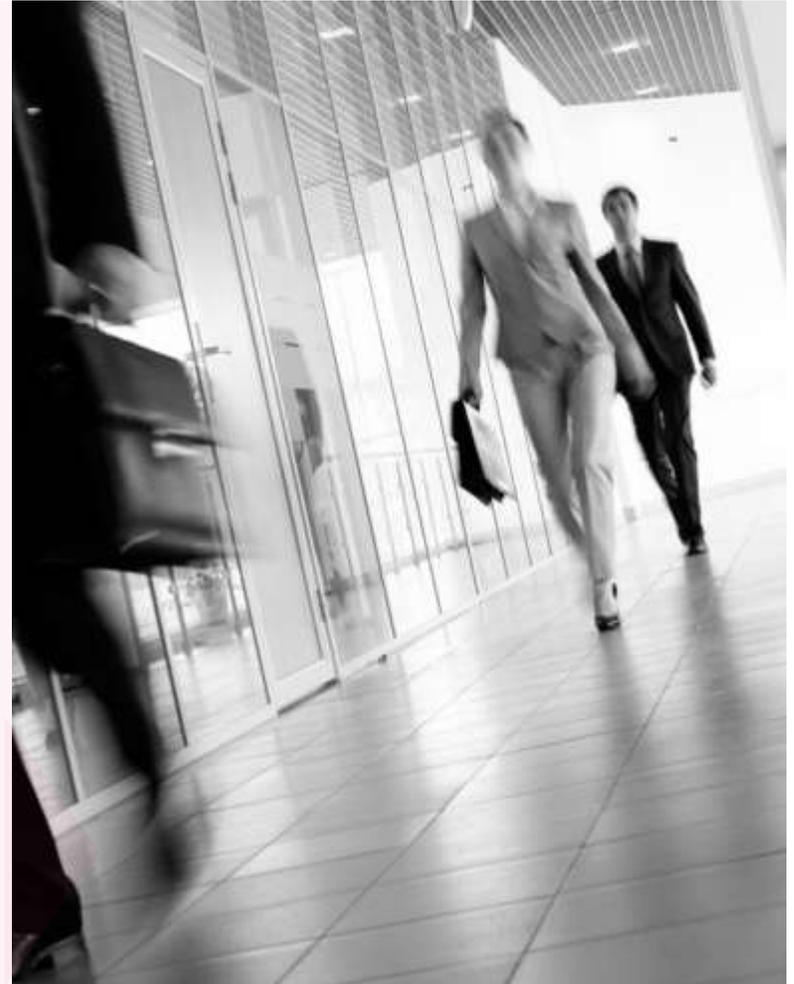
Recordkeeping Requirements

Covered Employers must keep, for a period of four years from each Covered Employee's dates of employment, the following records:

- Itemized pay statements;
- The employee's address, telephone number, date of first day of work;
- Records of Health Care Expenditures made, including calculations of Health Care Expenditures required under the law for each Covered Employee and proof documenting that such expenditures were made each quarter of each year;
- Documentation supporting the exemption of an employee from coverage, such as a signed Employee Voluntary Waiver Form for each employee for whom the employer is claiming an exemption from the Employer Spending Requirement; and
- Covered Employers must also demonstrate that the Required Health Care Expenditures were made quarterly, unless they meet the requirements of the exception for self-funded plans.

Reporting Requirements

- **Covered Employers must submit an Annual Reporting Form to the OLSE by April 30th of each year.**
- Covered Employers who fail to make a timely submission will be in violation of the HCSO and shall be subject to penalties.
- **The 2014 Annual Reporting Form was due on April 30, 2015.**



Penalties

Violation of the HCSO	Maximum Administrative Penalty
Failure to make the required minimum Health Care Expenditures within five business days of the quarterly due date (30 days after the conclusion of each quarter)	\$100.00 for each employee for each quarter that the violation occurred. This maximum penalty will increase each year for inflation
Failure to submit the Annual Reporting Form	\$500.00 for each quarter that the violation occurs
Retaliation against employees	\$100.00 for each person who is the target of the prohibited action for each day the violation occurs
Refusing to allow OLSE access to employer records	\$25.00 for each worker whose records are not provided for each day the violation occurs
Failure to maintain or retain accurate and complete records	\$500.00

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Thank You!

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