

San Francisco Health Care Security Ordinance: An overview and considerations for employers

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There are many regulations at the federal, state, and local levels that require employers to offer healthcare coverage to their employees. The passage of the Patient Protection and Affordable Care Act (ACA) in 2010 is perhaps the most broad-reaching regulation that required employers to offer healthcare coverage that meets minimum value and affordability requirements (also known as the employer mandate) to 95% of full-time employees—full-time employees defined as working, on average, more than 30 hours per week—or potentially be subject to penalties. In addition to the broad-reaching nature of the ACA, some local regulations also require employers to meet specific criteria to offer healthcare coverage to employees. This paper will provide an overview of the San Francisco Health Care Security Ordinance (SF HCSO) along with considerations and best practices to comply with this local ordinance.¹

Overview

The SF HCSO, as the name implies, applies to a *covered employer* with *covered employees* (see definitions below) working in the city and county of San Francisco. The ordinance applies to *all* employers with at least one employee working in the city and county of San Francisco, regardless of whether the employer is headquartered in the city and county of San Francisco. For this reason, many employers may not be aware of the ordinance and the necessary steps to comply with this local ordinance even though the ordinance has been in effect since 2008. The ordinance requires the covered employer to contribute a *minimum healthcare expenditure* to all covered employees under the ordinance; certain employees are considered *exempt employees* as defined by the ordinance.

Below are definitions of terms relevant to the ordinance.

COVERED EMPLOYER

An employer is covered under the SF HCSO if it:

- Is a for-profit business with 20 or more employees *or* a nonprofit business with 50 or more employees
- Has at least one employee who works in the city and county of San Francisco

For example, a for-profit business with 500 employees in the United States and only 10 employees who work in San Francisco is a covered employer under the SF HCSO.

COVERED EMPLOYEE

An employee is covered by the SF HCSO if that person works for a covered employer and:

- Is entitled to be paid the minimum wage
- Has been employed by the employer for at least 90 calendar days
- Performs at least eight hours of work per week within the geographic boundaries of San Francisco
- Does not meet one (or more) of the five exemption criteria discussed below

¹ Information about the ordinance from the city and county of San Francisco is available at <https://sfgov.org/olse//health-care-security-ordinance-hcso>. Note that definitions of "covered employer," "covered employee," and "exempt employees" may also be found at this site.

EXEMPT EMPLOYEES

An employee is exempt from the SF HCSO under the following conditions:

- Employees covered under the ordinance who voluntarily waive their right to have their employers make healthcare expenditures for their benefit by returning a voluntary waiver form.
- If an employee waives coverage (regardless of the reason) and does not return a voluntary waiver form, the employer is required to contribute a minimum healthcare expenditure on behalf of that employee. Voluntary waiver forms are only valid for one year.
- Employees who qualify as managers, supervisors, or confidential employees (as defined under the ordinance, see below) *and* earn more than the applicable salary exemption amount (\$107,991 annually or \$51.92 per hour in 2021).
- Employees who are eligible for Medicare or TRICARE (the healthcare program serving uniformed service members, retirees, and their dependents). An employer must be able to document employee eligibility in order to claim these exemptions.
- Employees who are employed by a nonprofit corporation for up to one year as trainees in a bona fide training program consistent with federal law.
- Employees who receive healthcare benefits pursuant to the San Francisco [Health Care Accountability Ordinance \(SF HCAO\)](#).

Under the SF HCSO, managerial, supervisory, and confidential employees are defined as follows:

- **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 that 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.”

An employee who has direct reports does not automatically satisfy the definition of a managerial employee under the SF HCSO. Human resources (HR) systems typically do not have data field(s) that allow for easy identification of employees who meet the definition of managerial, supervisory, or confidential employees. This creates an administrative challenge and burden on the employer.

The SF HCSO requires covered employers to make “irrevocable” contributions toward healthcare that meet or exceed the minimum healthcare expenditure requirement per hour worked for covered employees. Irrevocable healthcare expenditures are actual dollars paid by the covered employer on behalf of a covered employee in a calendar year (regardless of incurred date) and include the following expenditures:

- Premium payments for fully insured plans (medical, Rx, dental, and vision)
- Claims for self-insured plans (medical, Rx, dental, and vision)
- Stop-loss premiums (if applicable)
- Administrative expenses
- Contributions into a health savings account (HSA)
- Other eligible healthcare expenses

Contributions credited into a notional account such as a health reimbursement arrangement (HRA) do not qualify as an “irrevocable” healthcare expenditure; however, HRA dollars spent by covered employees qualify as an “irrevocable” healthcare expenditure.

The healthcare expenditure spent by the covered employer is offset by credits received by the employer. Offsets include the following:

- Employee paycheck contributions
- Pharmacy rebates (if applicable)
- Stop-loss reimbursements (if applicable)

MINIMUM HEALTHCARE EXPENDITURE

Covered employers are required to make a minimum healthcare expenditure per hour worked for every covered employee. The minimum healthcare expenditure requirement per hour payable² for a covered employer is dependent on the size of the employer as shown in the table in Figure 1. The number of employees shown is the total number of employees employed by the covered employer (regardless of work location).

FIGURE 1: EXPENDITURE RATES

Employer Size	Number of Workers	2020 Expenditure Rate	2021 Expenditure Rate
Large	All employers w/ 100+ workers	\$3.08 per hour payable	\$3.18 per hour payable
Medium	Businesses w/ 20-99 workers Nonprofits w/ 50-99 workers	\$2.05 per hour payable	\$2.12 per hour payable
Small	Businesses w/ 0-19 workers Nonprofits w/ 0-49 workers	Exempt from the ordinance	Exempt from the ordinance

Note: The expenditure rate is subject to increase each year.

Calculation of healthcare expenditure

This section provides an illustrative example of how to calculate the healthcare expenditure per hour. The calculation can be expressed by the formula shown in Figure 2.

FIGURE 2: CALCULATION OF HEALTHCARE EXPENDITURE



Suppose an employer offers a self-insured medical plan with costs totaling \$5 million in 2021 (for all covered members—employees, spouses and domestic partners, and children). Costs include claims, administrative expenses, and stop-loss premiums. The employer receives credits totaling \$1.5 million in 2020—credits include paycheck contributions, stop-loss reimbursement, and pharmacy rebates. The number of hours payable for the 600 employees enrolled in this self-insured medical plan in 2021 is 1.2 million hours (the hours payable per month for an employee is capped at 172 hours). The healthcare expenditure per hour for this self-insured medical plan is $(\$5 \text{ million} - \$1.5 \text{ million}) / 1.2 \text{ million} = \2.92 . In other words, the employer has contributed \$2.92 per hour for employees enrolled in this self-insured medical plan.

² Hours payable includes both the hours for which a person is paid wages for work performed within San Francisco and the hours for which a person is entitled to be paid wages, including, but not limited to, paid vacation hours, paid time off, and paid sick leave hours, but not exceeding 172 hours in a single month.

This calculation needs to be performed for each uniform health plan offered to employees in the city and county of San Francisco. Uniform health plans have the same eligibility, coverage tiers, copays, deductibles, and annual out-of-pocket maximums. Therefore, if the covered employer also offers additional plans (medical, dental, or vision), then the healthcare expenditure per payable hour needs to be calculated separately for each plan.

SF City Option

The previous section discussed the calculation of the healthcare expenditure per payable hour. If the employer is making healthcare expenditures on behalf of a covered employee that meet or exceed the minimum healthcare expenditure per hour, no further action is needed. However, if the healthcare expenditure falls short of the requirement, then the employer must make additional contributions to comply with the ordinance.

The [SF City Option](#) is one option for covered employers to comply with the ordinance. Under this option, the covered employer makes a contribution to the SF City Option for the shortfall (if any) annually by the end of February after the end of the calendar year for self-insured plans. All other contributions are made quarterly (30 days after the end of the calendar quarter).

In the example above, if an employee works 2,064 hours in 2021 (172 hours per month) and is enrolled in the self-insured medical plan with a healthcare expenditure equal to \$2.92 per payable hour (e.g., the employee is not enrolled in dental, vision, or other plans), then the covered employer (assuming it is a large employer) can make a contribution to the SF City Option equal to the difference between the 2021 expenditure rate and the employer group's healthcare expenditure $(\$3.18 - \$2.92) \times 2,064 = \$536.64$ to satisfy the expenditure requirement under the ordinance. Because the plan is self-insured, this payment is due by the end of February 2022.

The contribution will be made available to the covered employee for one of three health benefits through the SF City Option:

- **SF Covered Medical Reimbursement Account (SF Covered MRA):** The employer's contribution goes toward a benefit that subsidizes the employee's health insurance obtained through Covered California. Employees can obtain reimbursements from their SF Covered MRAs for their health insurance premiums and out-of-pocket costs, as well as a full range of medical, dental, and vision expenses.
- **Healthy San Francisco:** If an employee is eligible for Healthy San Francisco (HSF), the employer's payment may be applied toward the employee's HSF enrollment, and the employee may receive a discount on HSF program participation fees. To be eligible for HSF, the employee must live in San Francisco, must be uninsured, and must not qualify for public health insurance programs (such as Medi-Cal).
- **SF Medical Reimbursement Account (SF MRA):** The employer's contribution is deposited in an irrevocable reimbursement account. Employees can obtain reimbursements from their SF MRAs for a full range of medical, dental, and vision expenses, including reimbursements for the cost of insurance premiums.

Reporting requirements

Covered employers must submit an Annual Reporting Form to the San Francisco Office of Labor Standards Enforcement (OLSE) by April 30 of each year for the previous calendar year. This is a web-based form that must be submitted online. It is available on the [HCSO website](#) by April 1 each year. Please note that contributions to meet the healthcare expenditure requirement under the ordinance are due earlier (by the end of February for self-insured plans and 30 days after the end of a calendar quarter otherwise). Covered employers who fail to make a timely submission of the Annual Reporting Form will be in violation of the SF HCSO and subject to penalties.

Key considerations and best practices

The following are key considerations and best practices to comply with the SF HCSO:

- Create an inventory of cost and credits and payable hours (by uniform health plans) to calculate the healthcare expenditure per hour.
- Collect voluntary waiver forms from employees who waive coverage—waiver forms are only valid for one year.
- Designate a resource to be the subject matter expert on the SF HCSO.
- Maintain records and information used to identify managerial, supervisorial, and confidential employees.
- Maintain records sufficient to establish compliance with the employer spending requirement.
- Submit payments (if needed) to meet the minimum healthcare expenditure requirement under the ordinance.
- Comply with communication requirements under the ordinance in all workplaces with covered employees.
- Submit an [Annual Reporting Form](#) to the OLSE by April 30 of each year.

Summary

The SF HCSO is a local ordinance that applies to employers with 20 or more employees (regardless of location) with at least one employee working in the city and county of San Francisco. The ordinance requires that covered employers make irrevocable healthcare expenditures on behalf of covered employees who meet or exceed the minimum healthcare expenditure requirement under the ordinance. The data collection effort and analysis required to assess whether healthcare expenditures meet or exceed the minimum requirement under the ordinance is not a trivial exercise. Covered employers must comply with this ordinance and also maintain records of compliance in the event of an audit. Failure to comply with this ordinance may result in financial penalties.

If you have questions about the San Francisco Health Care Security Ordinance, call 404-254-6792 or email calvin.chou@milliman.com.



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