



San Francisco Employer Health Mandate Upheld – 2008 Employer Filing Required by April 30

On March 9, the U.S. Court of Appeals for the Ninth Circuit denied a request for a rehearing on the validity of the employer health spending requirement under San Francisco's Health Care Security Ordinance. The Supreme Court has just denied a request to halt enforcement of the law. Thus, affected employers should prepare the first annual employer reporting form, which must be filed by April 30, 2009.

Background

In 2006, San Francisco became the first city to enact a law requiring health care to be provided to all residents. The Health Care Security Ordinance (HCSO) requires covered employers to make health care expenditures with respect to their San Francisco employees, including by purchasing health insurance coverage for their employees and/or by making payments to San Francisco. A covered employer is any employer with 20 or more employees in the United States that has any employees in San Francisco. (See our January 24, 2008 [For Your Information](#).)

Recent Court Rulings

Shortly after enactment of the HCSO in 2006, the Golden Gate Restaurant Association (GGRA) filed suit, arguing that the law violated ERISA. In December 2007, a federal district court held that the employer spending mandate was preempted by ERISA and prohibited its enforcement. However, on January 9, 2008, a three-judge panel of the Ninth Circuit stayed the ruling, allowing the HCSO employer requirements to go into effect immediately, and to be enforced until it made a final determination on the validity of the HCSO. On September 30, 2008, the same panel formally reversed the district court's ruling, and upheld the employer spending mandate. GGRA's subsequent request for a hearing by the full Ninth Circuit was denied on March 9.

GGRA's emergency application to the U.S. Supreme Court to halt enforcement has just been denied by Justice Kennedy. Although GGRA may ask the Supreme Court to review the Ninth Circuit ruling, in the meantime, covered employers must make quarterly health care expenditures to or for the benefit of covered employees.

BUCK COMMENT. *Some employers may have delayed complying with the employer spending requirement as the litigation moved through the courts. As a result of the latest court decisions, employers with employees in San Francisco should ensure that they have satisfied the spending requirement for 2008. In addition, the first quarterly payment for 2009 is due by April 30, 2009.*

2009 Minimum Expenditure Requirements

The minimum expenditure requirements, the employees covered, and the earnings threshold for excluding certain employees have all been increased for 2009. For employers with 100 or more employees across the United States, the minimum hourly expenditure rate has increased from \$1.76 to \$1.85. Now, employees working an average of 8 or more hours a week in San Francisco are covered, down from an average of 10 or more hours a week in 2008. Further, the 2009 minimum spending requirement does not apply to managerial, supervisory or confidential employees earning more than \$80,297 annually, up from \$76,851 in 2008.

Annual Reporting Form

Starting in 2008, covered employers had to satisfy the minimum employer spending requirement on a quarterly basis and file an annual reporting form ([ARF](#)) with the City of San Francisco. The 2008 ARF is due by April 30, 2009, and failure to file it will subject employers to penalties and corrective action.

The annual report requires the reporting of census and expenditure data on a quarterly basis, including the number of covered employees, hours worked, and health care expenditures, broken out by type of expenditure and amount for each employee and dependent. One ARF is filed for all entities that are within the same controlled group.

BUCK COMMENT. *In addition to medical claims, employers are required to report other health care expenditures, such as for dental care, vision care and spending accounts, regardless of whether those programs were used to satisfy the minimum expenditure requirements.*

Conclusion

As the first annual reporting deadline quickly approaches, employers should determine what, if any, additional payments will be required for 2008 as well as for the first quarter of 2009. Buck's consultants are prepared to assist employers in complying with these San Francisco requirements.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.