

## San Francisco Significantly Changes 2018 Minimum Healthcare Spending Requirements

San Francisco’s Office of Labor Standards Enforcement has issued new rules for the enforcement of the city’s minimum healthcare spending requirements. These new rules will require significant changes in process for employers with self-insured health plans. The 2018 minimum expenditure rates have also been released.

### Background

Since 2006, the San Francisco Health Care Security Ordinance (HCSO) has required covered employers to make minimum healthcare expenditures on behalf of their San Francisco employees for each hour paid for work performed in San Francisco (including paid time off, like vacation, holidays, sick leave and, more recently, paid parental leave). “Covered employers” are those with 20 or more employees in the U.S. and with at least one employee in San Francisco. A “covered employee” is one who works at least eight hours per week in San Francisco, is entitled to be paid the minimum wage and has been employed for at least 90 days. Employers can pay for medical, dental, vision or other healthcare coverage (such as a health savings account or health reimbursement account) and/or make a payment to the city of San Francisco.

In 2014, the HCSO was amended to phase out revocable employer healthcare expenditures starting in 2015. Beginning January 1, 2017, 100% of the employer expenditures must be irrevocable to count toward the minimum spending requirement — that is, they must be payments that the employer has not retained and cannot recover, even if the employee leaves the job. Irrevocable expenditures include payments to an insurer for medical premiums, payments to the city of San Francisco, payments for healthcare claims, and contributions to a health savings account.

### New HCSO Rules

On October 10, 2017, the San Francisco Office of Labor Standards Enforcement published new [Health Care Security Ordinance Rules](#) (rules) concerning the employer spending requirement. The new rules were effective on October 29, 2017.



The most significant change in the new rules concerns the treatment of self-insured health plans. Under the prior rules, employers were required to meet the minimum expenditure amounts each calendar quarter, with expenditures being made no later than 30 days after the end of each quarter. To determine compliance with the employer minimum spending requirement, employers used premium rates for insured health plans and COBRA rates for self-insured plans. Those rates were adjusted for employee contributions. If the minimum expenditure requirement was not satisfied for an employee, the employer can make a payment to the city on behalf of the employee within 30 days after the end of each calendar quarter.

The new rules no longer allow the use of COBRA rates for self-insured plans, and instead require that actual claims paid, plus any third-party administrative expenses, be used to determine compliance with the employer spending requirement. Average claim payments can be used to determine compliance based on employees participating in a “uniform health plan” — a plan with the same benefit design for enrolled employees, “including but not limited to the same co-pay requirements, out-of-pocket maximums, deductibles, coverage tiers and eligibility criteria.” The average can be based on only “covered employees” who work in the city, or based on all employees who participate in the uniform plan. For self-insured plans the determination can be done after each calendar quarter, or annually with needed expenditures being made by the end of the February following the end of the calendar year.

COBRA rates can no longer be used for self-insured plans because the minimum employer spending requirement can only be satisfied by amounts irrevocably paid to third parties. COBRA rates are not actual claim payments. While the rules state that the new requirements are effective October 29, 2017, the city has informally stated that employers can continue to use COBRA rates through the end of 2017, and that the requirement to use actual claims is effective January 1, 2018.

**Comment.** Employers with self-insured plans will need to develop a new compliance strategy, including obtaining the needed data from the claim administrator either for just covered employees, or for all employees enrolled in a uniform health plan. Average hourly expenditures across a uniform health plan will need to be determined, adjusted for employee contributions. While an annual determination for self-insured plans will probably be best practice, employers with both insured and self-insured plans may need to continue a quarterly process.

## 2018 Minimum Expenditure Rates

The San Francisco Office of Labor Standards Enforcement has also [released](#) the minimum amounts for 2018:

Business Size		January 1, 2017	January 1, 2018	Percentage Change
Large	100+ employees	\$2.64/hour paid	\$2.83/hour paid	7.2% increase
Medium	20 – 99 employees	\$1.76/hour paid	\$1.89/hour paid	7.4% increase
Small	0 – 19 employees	Exempt	Exempt	Not applicable

## Annual HCSO Notice

Covered employers must post an HCSO notice in all workplaces with covered employees. The [2018 notice](#) is available and must be posted in a conspicuous location.

The HCSO notice must be posted in English, Spanish and Chinese and in any other language spoken by at least 5% of the employees at that workplace. The official notice includes English, Spanish, Chinese, Tagalog, Russian and Vietnamese. If more than 5% of the workers speak a language other than those included in the notice, the employer must translate and post the notice in that language.

The new rules also require that hours paid under the San Francisco Paid Parental Leave Ordinance (PPLO) be included in determining compliance with the minimum healthcare expenditure requirement. (See our [May 9, 2016 FYI](#) for more on the PPLO.)

## Waiver Form

Employees who sign an Employee Voluntary Waiver Form verifying that they have coverage through another employer, either as an employee or a dependent of an employee, are not subject to the minimum healthcare spending requirement. But several requirements must be satisfied:

- The HCSO waiver form must be used, with no alterations. An electronic version of the form can be used. An updated [HCSO waiver](#) form was released on November 1, 2017.
- The waiver is only valid for one year, after which the employee must sign a new waiver.
- The waiver form must be voluntarily completed by the employee, without pressure or coercion from the employer.

Employers are also required to complete an annual reporting to the Office of Labor Standards Enforcement. The annual reporting form for 2017, which must be submitted by April 30, 2018, is usually available on the HCSO website around April 1. Employers can register with the city to receive an email notification when the form is available.

## In Closing

Since the new rules are now in effect, employers with employees in San Francisco should review their compliance against the new requirements. The San Francisco Office of Labor Standards Enforcement has the authority to conduct investigations, monitor compliance, and obtain restitution and penalties for violations of the HCSO. Employers with self-insured health plans will need to make significant changes to their current compliance process. All employers will need to ensure that they are using the most current expenditure rates, notice and waiver forms.

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