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San Francisco postpones HCSO and FCO reporting deadline

San Francisco requires covered employers to make minimum healthcare expenditures on behalf of their San Francisco employees and to comply with certain requirements regarding the use of arrest and conviction records in hiring and other employment decisions. Employers are generally required to report on compliance with these requirements by April 30 each year. However, San Francisco has now postponed the reporting requirement for 2020 until at least October 31, 2021.

Background

Since 2006, the San Francisco Health Care Security Ordinance (HCSO) has required covered employers to make minimum healthcare expenditures on behalf of employees working in San Francisco. “Covered employers” are those with 20 or more employees in the U.S. and with at least one employee working in San Francisco. Another city ordinance — the Fair Chance Ordinance (FCO) — requires employers with five or more employees worldwide to comply with certain requirements “regarding the use of arrest and convictions records in hiring and employment decisions.”

Covered employers must report to San Francisco’s Office of Labor Standards Enforcement (OLSE) by April 30 each year on compliance with both the HCSO and FCO requirements. Employers that fail to make a timely submission are subject to penalties. However, in the [Fifth Supplement](#) to her proclamation of local emergency related to the COVID-19 pandemic, Mayor London Breed waived the calendar year 2019 reporting requirements.

American Rescue Plan Act two-part webinar series

Replays of both of our recent ARPA webinars are available. In the first, our team of experts explored the [impact of the Act on pension plan funding](#) and in the second, we addressed [the Act’s compliance implications on employment, health, and welfare benefits](#).

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Authors

Nancy Vary, JD

Richard Stover, FSA,
MAAA

Annual reporting for 2020 postponed

The San Francisco Board of Supervisors is considering proposed legislation to codify the waiver of the annual reporting requirements for HCSO and FCO compliance for 2019 and to waive the requirements for calendar year 2020. The proposal is intended to “reduce the administrative burden on employers” to submit a report to the city at a time of “significant economic strain and uncertainty.”

In anticipation of action by the Board of Supervisors, OLSE announced that it is postponing the annual reporting deadline for calendar year 2020 until at least October 31, 2021. While reporting is delayed, compliance obligations are not.

As OLSE confirmed, neither this announcement nor the proposed legislation alters or eliminates minimum healthcare spending requirements or any other requirement of the HCSO or the FCO for calendar year 2020 or future years. Nor do they change annual reporting requirements for calendar year 2021 or beyond. Employers must still satisfy the minimum expenditure amounts.

2021 minimum expenditure rates

Even though annual reporting is paused, employers must continue to make required 2021 healthcare expenditures no later than 30 days after the end of each calendar quarter on behalf of covered employees (those who have been employed for more than 90 days and who regularly work at least eight hours per week in San Francisco) at the following rates:

Business size		January 1, 2020	January 1, 2021	Percentage change
Large	All employers w/100+ employees	\$3.08/hour paid	\$3.18/hour paid	3.2% increase
Medium	Businesses w/20 – 99 employees Nonprofits w/50 – 99 employees	\$2.05/hour paid	\$2.12/hour paid	3.4% increase
Small	Businesses w/0 – 19 employees Nonprofits w/0 – 49 employees	Exempt	Exempt	Not applicable

Note: 2021 exemption threshold: managerial, supervisory, and confidential employees who earn more than \$107,991 annually (or \$51.92 per hour) are exempt from the HCSO minimum expenditure requirement.

Covered employers should ensure that they maintain records sufficient to establish compliance with the spending requirements and have posted the 2021 HCSO notice in their workplaces or job sites.

In closing

San Francisco's annual reporting deadline for HCISO and FCO compliance for 2020 has been postponed for six months, pending further action by the Board of Supervisors. While reporting is delayed, employers must continue to make minimum healthcare expenditures and satisfy all other requirements under those ordinances that remain in effect.

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