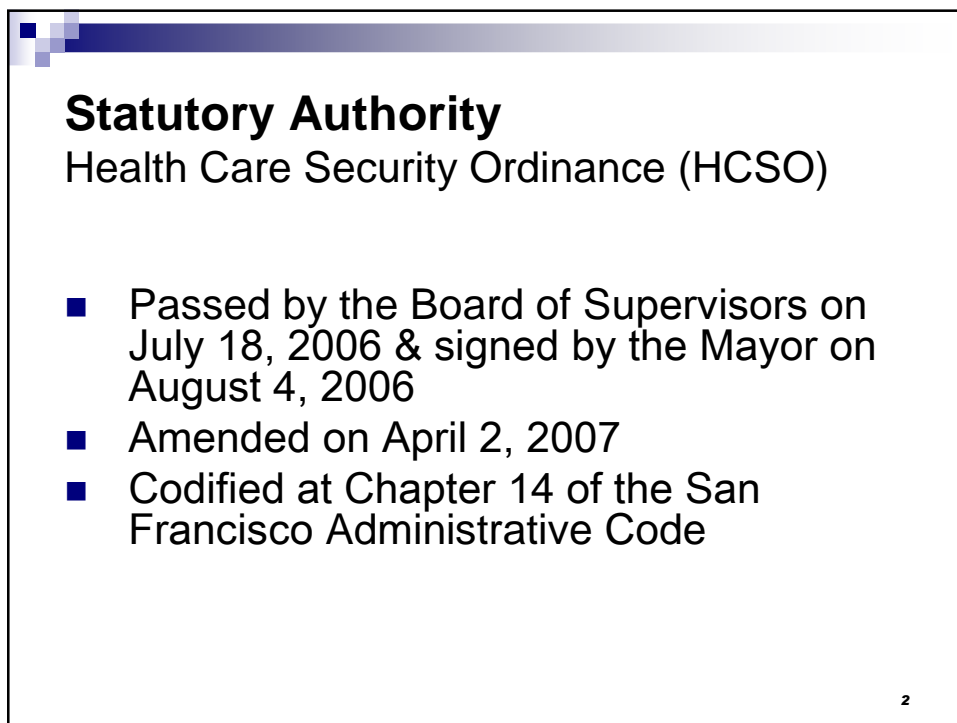


**San Francisco
Health Care Security Ordinance**

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Statutory Authority
Health Care Security Ordinance (HCSO)

- Passed by the Board of Supervisors on July 18, 2006 & signed by the Mayor on August 4, 2006
- Amended on April 2, 2007
- Codified at Chapter 14 of the San Francisco Administrative Code

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Legislative Findings

- Approximately 82,000 adult SF residents are uninsured (*at the time legislation was introduced)
- More than half of this population is employed
- Uninsured non-residents who work in SF utilize emergency health care services in SF

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Legislative Intent

To ensure that all individuals who live or work in San Francisco have access to affordable health care by:

- Mandating the DPH to create a comprehensive health care reform program that is affordable for uninsured individuals living or working in San Francisco
- Requiring businesses to make reasonable health care expenditures on behalf of their covered employees

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What are the responsibilities of each city agency?

- The DPH is responsible for creating the Health Access Program (HAP)/*Healthy San Francisco (HSF)* and setting up Medical Reimbursement Accounts (MRAs) for those who do not qualify for HSF.
- The OLSE is responsible for ensuring that employers understand and fulfill the “Employer Spending Requirement” (ESR) under the HCSO.

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Update on Lawsuit

- November 2006 – Golden Gate Restaurant Association files lawsuit challenging the ESR of the HCSO
- December 26, 2007 – District Court finds the ESR invalid
- December 27, 2007 – City & County of SF files Appeal and Emergency Motion for a Stay Pending Appeal, asking the Court of Appeals to allow the ESR to go into effect on January 2, 2008.
- January 9, 2008 – Court of Appeals grants the City's Motion for a Stay, which allows ESR to go into effect, pending the City's appeal of the District Court's decision
- September 30, 2008 – Court of Appeals reverses the District Court's ruling, upholding the ESR
 - October 2008 – GGRA requests en banc hearing
 - December 2008 – City & County files response to GGRA request

The ESR has been in effect since January 9, 2008 and continues to be in effect for all covered businesses.

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When did the Employer Spending Requirement of the HCSO take effect?

- The “Employer Spending Requirement” of the HCSO took effect for all employers with 50 or more employees on January 9, 2008.
- The effective date for for-profit employers with 20-49 employees was April 1, 2008.
- NOTE: Nonprofit employers with fewer than 50 employees and Small employers with fewer than 20 employees are exempt from this law.

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What is the Employer Spending Requirement?

- quarterly “health care expenditures”
- meeting a minimum “expenditure rate”
- made by “covered employers”
- to or for the benefit of their “covered employees”
- for “health care services”

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Who is a covered employer?

A business is covered by the HCSO if it

- engages in business within the City and is required to obtain a valid San Francisco business registration certificate, and
- employs 20 or more employees per week.

Exempt Employers:

- Nonprofits with fewer than 50 employees, and
- Small Businesses (with fewer than 20 employees)

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What if the employer is not located, or the worker does not live, in San Francisco?

Regardless of where the employer is located, *all* persons performing work for the employer are counted (to determine whether the employer is covered), whether or not the persons live or work in San Francisco.

However, only employees who work within the geographic boundaries of SF may be covered employees.

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Who is a covered employee?

Any person who

- has been employed for at least 90 calendar days, and
- performs at least 8 hours of work per week within San Francisco,
- including those who work on a part-time or temporary basis

NOTE: The 2008 hours requirement was 10 hours/week.

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Which employees are exempt from coverage?

- Employees who sign a Voluntary Waiver Form verifying that they are receiving health care from another employer, either as an employee or through their spouse or domestic partner's policy, and that s/he *voluntarily* waives the right to have her current employer make a HCE for her benefit.
- Managers, supervisors, or confidential employees earning \$80,397 or more annually in 2009;
- Employees who are covered by Medicare or TRICARE/CHAMPUS;
- 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;
- Employees who receive health care benefits pursuant to Section 12Q.2.9 of the San Francisco Administrative Code (Health Care Accountability Ordinance)

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What qualifies as a “Health Care Expenditure” (HCE)?

An amount

- paid by a covered employer
- to its covered employees, or to a third party on behalf of its covered employees
- for the purpose of providing health care services for covered employees, or reimbursing the cost of such services for its covered employees.

Health care services means medical, dental, or vision care, services, or goods that may qualify as tax deductible medical care expenses under Section 213 of the Internal Revenue Code, or medical care, services, or goods *having substantially the same purpose or effect* as such deductible expenses.

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How is the HCE calculated?

The HCE for each covered employee is calculated by multiplying the total number of “hours paid” to that employee by the applicable HCE rate.

- “Hours paid” 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, such as paid vacation hours, paid time off, and paid sick leave hours
- Only hours worked in SF are used in the calculation
- Ceiling/Cap of 172 hours paid per month

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Applicable Expenditure Rates

Business Size		January 9 2008	April 1 2008	January 1 2009
Large {	100+ Employees	\$1.76/hour		\$1.85/hour
Medium {	50-99 Employees	\$1.17/hour		\$1.23/hour
	20-49 Employees *	Not Applicable	\$1.17/hour	
Small {	1-19 Employees	Not Applicable		

** Non-profits with less than 50 employees are exempt from the spending requirement.*

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When must the HCE be made?

- Calculations must be made and expended at least quarterly, within 30 days after the end of the preceding quarter.
- Employers are, however, free to begin making expenditures before that time.

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Why does the calculation have to be made for *each* employee?

- Payments to or on behalf of one covered employee that exceed the required health expenditure for that employee will not be considered in determining whether an employer has met its total required health care expenditures for *all* employees.
- Subject to two exceptions
 - Uniform health coverage plans
 - Self-insured/Self-funded plans

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What if I provide uniform coverage or have a self-insured plan?

- Covered Employer will be deemed to comply with the ESR if the actual average hourly expenditure rate per employee meets or exceeds the expenditure rate required under the Ordinance. See Regulation 6.2(B).
- Two easier & more accurate options to determine whether the rate meets the ESR --
 - Calculate the actual average hourly expenditure rate by dividing the total amount of health care expenditures made for employees by total number of hours paid to such employees.
 - Calculate the average hourly expenditure rate by dividing the monthly premium or the "COBRA equivalent" rate, minus any employee contributions, by 172 hours
- Aggregated/average expenditure only applies to those employees covered by the same plan
- Remember to deduct any employee contributions

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Examples of HCEs that meet the requirements of the HCSO

- Payments of premiums for health insurance coverage for the covered employee;
- Contributions on behalf of the covered employee to a health spending account, such as a health reimbursement arrangement, a flexible spending account, or a health savings account; and
- Cash reimbursements to the covered employee for expenses incurred in the purchase of health care services, such as doctor's and pharmacy bills.
- Payments to the City for enrollment of the covered employee in the HAP/Healthy San Francisco (HSF) or to fund a Medical Reimbursement Account (MRA);

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

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How does this requirement apply on public works contracts?

- Payment of the prevailing wage fringe benefit requirement in cash (as part of the covered employee's paycheck or otherwise) shall not satisfy the Employer Spending Requirement of this Ordinance.

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How does this requirement apply to union employees?

- Only the portion of the Health and Welfare contributions going toward health care coverage may be counted towards the minimum expenditure required under the HCSO.
- The portion of Health and Welfare contributions that goes towards health care coverage must be separated from payments for unrelated benefits, such as life insurance, disability payments, etc.

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What if the health insurance premiums that I currently pay for my employees do not reach the amount required by this Ordinance?

- Employers must make the FULL expenditure required by law.
- Employee contributions do NOT count, e.g. employee contributions to FSA
- If the monthly premium paid by the employer does not meet the required expenditure amount, it must choose how it will expend the remaining amount, for example, by complementing the plan with a reimbursement account funded by the remainder.

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Additional Employer Responsibilities

- **Notice to Employee/City Option Deposit Confirmation**
- **Recordkeeping:** Employers must retain records for a period of four years, and shall allow OLSE access to such records, which must include:
 - Covered employees' address, telephone number, and date of first day of work;
 - Itemized pay statements consistent with the requirements of Labor Code Sec. 226;
 - 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; and, if applicable;
 - Signed Voluntary Waiver Forms for every employee for whom a covered employer is claiming an exemption from the HCE requirement
- **Annual Reporting Requirement – *available online***
- **Cooperation with OLSE Investigations & Audits**, including providing access to workers and other witnesses, as well as employer records including, but not limited to, employee time sheets, payroll records, employee paychecks, and other documents described in Regulation 7.1

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Anti-retaliation Provision

- It is unlawful for an employer to discipline, discharge, demote, suspend, or take any other adverse action against an employee for exercising his/her rights under this law.

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Administrative Enforcement

The OLSE has the authority to conduct investigations, monitoring and audits; to order corrective action for violations of the HCSO; and to seek penalties if those violations are not corrected.

Any person may file a complaint, and the OLSE may initiate an investigation on its own authority.

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Penalties & Corrective Action

Failure to make the minimum HCEs (Admin. Code §§ 14.3(a) & 14.4(e)):	Up to one-and-one-half times the total expenditures that a covered employer failed to make, plus interest of up to ten (10) percent on all due and unpaid health care expenditures, from the date payment should have been made.
Failure to cooperate with the OLSE or otherwise impeding the OLSE's ability to conduct an audit or investigation (Admin. Code §§ 14.3(b) & 14.4(e)):	\$25 per day for each day that the violation occurred or occurs.
Failure to allow reasonable access to records of health care expenditures (Admin. Code §§ 14.3(b) & 14.4(e)):	\$25 for each worker whose records are at issue for each day that the violation occurred or occurs.
Failure to maintain or retain accurate and complete records, including destruction of relevant evidence (Admin. Code §§ 14.3(b) & 14.4(e); Regulation 7.2):	\$500
Failure to satisfy the annual reporting requirement (Admin. Code §§ 14.3(b) & 14.4(e)):	\$500
Reduction of the number of employees in order to (1) avoid being considered a covered employer, or to (2) be subject to a lower health care expenditure rate (Admin. Code § 14.4(c); Regulation 7.5):	\$25 per day for each day that the violation occurred or occurs.
Retaliation, including harassment, and/or discrimination in violation of the Ordinance (Admin. Code § 14.4(d); Regulations 7.6-7.7):	\$100 for each worker or person whose rights under this Ordinance was violated for each day that the violation occurred or occurs.

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Resources

- ❑ Office of Labor Standards Enforcement
 - ❑ www.sfgov.org/olse/hcso
 - ❑ 415-554-7892
 - ❑ HCSO@sfgov.org

- ❑ Department of Public Health/San Francisco Health Plan
 - ❑ www.HealthySanFrancisco.org
 - ❑ Employer Services Line 415-615-4567
 - ❑ Enrollment Appointment Line 415-615-4588
 - ❑ Participant Line 415-615-4555

- ❑ Office of Small Business/Small Business Assistance Center
 - ❑ www.sfgov.org/sbc
 - ❑ 415-554-6134

- ❑ Treasurer/Tax Collector
 - ❑ www.sfgov.org/treasurer
 - ❑ Taxpayer Assistance 415-554-4400

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SF Office of Labor Standards Enforcement

City Hall, Room 430
1 Dr Carlton B Goodlett Place
San Francisco, CA 94102

Health Care Accountability Ordinance

HCAO@sfgov.org
(415) 554-6292

Health Care Security Ordinance

HCSO@sfgov.org
(415) 554-7892

Minimum Compensation Ordinance

MCO@sfgov.org
(415) 554-6292

Minimum Wage Ordinance

MWO@sfgov.org
(415) 554-6292

Paid Sick Leave Ordinance

PSL@sfgov.org
(415) 554-6271

Prevailing Wage Unit

(415) 554-6235

Sweatfree Ordinance

(415) 554-6235

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