



San Francisco Health Care Security Ordinance & its intersection with the Health Care Accountability Ordinance

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❑ Overview of HCAO & HCSO

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Statutory Authority:

Health Care Accountability Ordinance

- Passed by the Board on May 31, 2001
- Amended on March 24, 2006
- Codified at Chapter 12Q of the SF Admin. Code

Effective Dates:

The HCAO took effect on July 1, 2001; new amendments went into effect on April 23, 2006.



Legislative Findings & Intent of the HCAO

Legislative Finding: That the quality of service provided to the public by contractors and subcontractors would be enhanced if the employees providing the services had access to sound medical care through health insurance.

Legislative Intent: To ensure that all individuals working on City contracts have health coverage meeting Minimum Standards or are able to access medical care through the City's health care system.

Who is a covered employer under the HCAO?

- City contractors and certain tenants leasing City property with 21 or more employees *anywhere* and cumulative City contracts or subcontracts that exceed \$25,000, and
- Nonprofits with 51 or more employees and cumulative City contracts or subcontracts that exceed \$50,000.
- Exempt Employers:
 - Nonprofits with fewer than 51 employees and contracts/subcontracts that are below \$50,000
 - Contractors/Tenants with contracts/subcontracts that are below \$25,000

What are the health coverage requirements of the HCAO?

Each month, “covered employers” under the HCAO are required to

- offer health plan benefits meeting Minimum Standards to their covered employees,
- make payments to the City for use by the Department of Public Health, or
- make payments directly to their employees under limited circumstances.

Minimum Standards for Health Plan Benefits under the HCAO (effective November 1, 2008)

Employers that choose to comply with the HCAO by offering a health plan must offer at least one health plan that meets the Minimum Standards, as described below.

- The plan must be a Health Maintenance Organization (HMO).
- Employers may not require employees to pay a premium contribution for employee-only coverage.
- The HMO may not include a deductible of any amount for non-pharmacy services, but may include a deductible for prescription drugs, subject to the deductible cap specified below.
- The HMO's annual Out-of-Pocket (OOP) maximum may be no higher than \$3,500 when combined with any applicable prescription drug deductible. For example, it is acceptable to have a plan with a \$3,000 OOP maximum and a \$500 drug deductible. A plan with a \$3,500 OOP maximum and a \$500 drug deductible is not acceptable.
- Co-payments for office visits (including PCP, perinatal and maternity, preventive care, and family planning) shall not exceed \$30 per visit.
- Each plan must be comprehensive and provide coverage for the various specific services (listed on notice).
- Employers not offering a health plan that meets the Minimum Standards as described above must pay to the San Francisco Department of Public Health \$2.00 per hour (for a maximum of \$80.00 per week).

Which employees are covered under the HCAO?

Any employee who

- Works on the City contract, and
- Performs at least 15 hours of work per week on the City contract

UNLESS they are exempt from coverage under the HCAO.

Which employees are exempt from coverage under the HCAO ?

- Employees who are students under the age of 18;
- Trainees in bona fide training programs who will advance to permanent positions, provided that they do not replace, displace, or lower the wage or benefits of any existing position or other employee;
- Employees covered by prevailing wage requirements;
- Disabled workers covered by a sub-minimum wage certificate issued by the U.S. Department of Labor or who would otherwise be covered but for the fact that the employer is paying a wage equal to or higher than the minimum wage; and
- Temporary employees of nonprofits who work on an hourly or per diem basis to replace a regular employee during a temporary absence.



Statutory Authority:

Health Care Security Ordinance

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

Legislative Findings & Intent of the HCSO

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

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 an affordable comprehensive health care reform program for uninsured individuals living or working in San Francisco
- Requiring businesses to make reasonable health care expenditures on behalf of their covered employees

Effective Dates of the HCSO

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 or more 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.

Who is a covered employer under the HCSO?

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 *anywhere*.
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- Exempt Employers:
 - Nonprofits with fewer than 50 employees, and
 - Small Businesses (with fewer than 20 employees)

What is the Employer Spending Requirement under the HCSO?

- 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”

Which employees are covered under the HCSO?

The HCSO covers any employee 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

UNLESS they are exempt from coverage under the HCSO.

Which employees are exempt from coverage under the HCSO?

- 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 more than \$80,397 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)

What are the obligations of employers who are covered by both ordinances?

Apply the HCAO requirements first:

- offer health plan benefits meeting Minimum Standards to their covered employees,
- make payments to the City for use by the Department of Public Health, or
- make payments directly to their employees under limited circumstances.

NOTE: All Covered Employers must track their employees who work on City contracts and offer health plan benefits to those meeting the requirements of this Ordinance.



After I've complied with the HCAO, what else is required under the HCSO?

For all employees not covered by the HCAO, you'll need to determine whether the HCSO provides coverage.

Because the coverage and exemption categories differ, there are some categories of employees who may not be covered under the HCAO, but are covered under the HCSO.

Categories of employees that may qualify for exemptions under the HCAO, but are covered under the HCSO:

- Employees who do not work on City contracts;
- Employees who work more than 8 hours/week, but less than 15 hours/week on a City contract;
- Employees who are also Students under the age of 18;
- Employees covered by prevailing wage requirements;
- Disabled workers; and
- Temporary employees of nonprofits who work on an hourly or per diem basis to replace a regular employee during a temporary absence (i.e., relief workers).

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

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.

How is the HCE calculated under the HCSO?

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
- Only hours worked in SF are used in the calculation
- Ceiling/Cap of 172 hours paid per month
- Calculations must be made and expended at least quarterly, within 30 days after the end of the quarter.

Health Care Expenditure Rates under the HCSO

Employer Health Care Expenditure Rate Schedule				
Business Size		January 1 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.

Why does the HCSO expenditure 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 very limited exceptions:
 - Uniform health coverage plans
 - Self-insured/Self-funded plans

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**

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.

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.

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.

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

- Employers must make the FULL expenditure required by law.
- 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.
- If you are spending at or above the amount of the HCE, you have no further expenditure obligations under the HCSO.

Additional Employer Responsibilities under the HCSO

- **Notice to Employee of Payment to the City**
- **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**
- **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

What are the Employer's Recordkeeping Responsibilities under the HCAO?

Contractors shall maintain, and shall require Subcontractors or Subtenants covered by the HCAO to maintain, employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on a City Contract or Subcontract:

- Employee and payroll records must also contain the following information: Name; Address; Date of hire; Date of termination; Job classification; Rate of pay;
 - Hours worked on an HCAO contract, for each pay period in which an employee qualified as a “Covered Employee”;
 - Health insurance remittal forms with employee names;
 - Materials from health insurer documenting scope of coverage and employee costs; and
 - Copies of any correspondence to employees notifying the employees that they qualify for coverage at no charge.

- Where a Covered Employee has signed a waiver declining health coverage offered by the Employer, the supporting documentation specified in Regulation 3.5 must also be included in employee records.

- Contractors, Subcontractors, Tenants and Subtenants must maintain the records referred to in this Regulation for three years after the City's final payment on the contract.

If the Contractor fails to maintain records that accurately reflect the number of hours each employee has worked on a City Contract or Subcontract, it shall be presumed that any Employee who has worked on a City Contract or Subcontract is a Covered Employee as defined in § 12Q.2.9.



Anti-retaliation Provision under the HCSO

- 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.



Administrative Enforcement under the HCSO

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.

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.

Resources

- Office of Labor Standards Enforcement
 - www.sfgov.org/olse/hcso
 - (415) 554-7892
 - HCSO@sfgov.org
 - www.sfgov.org/olse/hcao
 - (415) 554-6292
 - HCAO@sfgov.org

- Department of Public Health/San Francisco Health Plan
 - www.HealthySanFrancisco.org
 - (415) 615-4500 general inquiries
 - (415) 615-4567 employer services line
 - info@sfhp.org

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

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