

CALIFORNIA

EMPLOYMENT LAW

San Francisco Health Care Security Ordinance (HCSO)



The San Francisco Health Care Security Ordinance (HCSO) established several employer health care-related obligations for covered employers. The HCSO, which generally applies to **for-profit businesses with 20 or more employees** and **nonprofit businesses with 50 or more employees**, took effect on Jan. 9, 2008. However, it was [amended](#) in 2014 to phase out the use of revocable health care expenditures. [Final revised HCSO regulations](#) took effect on Oct. 29, 2017.

This Employment Law Summary provides an overview of the San Francisco HCSO.

STATE RESOURCES

Office of Labor Standards Enforcement (OLSE)
<https://sfgov.org/olse/>

HCSO Website
The OLSE maintains a [website](#) on the HCSO.

Poster
Employers can use this model [poster](#) to satisfy their posting requirements.

OVERVIEW OF THE HCSO

Under the HCSO, all covered employers must:

- Satisfy an **employer spending requirement (ESR)** by calculating and making required health care expenditures on behalf of all covered employees;
- **Maintain records** sufficient to establish compliance with the ESR;
- Post an **HCSO Notice** in all workplaces with covered employees; and
- Submit an **HCSO Annual Reporting Form** to the Office of Labor Standards Enforcement (OLSE) by April 30 of each year.

COVERED EMPLOYERS

An employer is covered under the HCSO if it:

- Is a **for-profit business with 20 or more employees**, or a **nonprofit business with 50 or more employees**; and
- Has employees who work in San Francisco.

However, public sector employers (such as the City and County of San Francisco, the San Francisco Unified School District, the University of California, or other agencies of the state or federal government) are not covered under the HCSO.

COVERED EMPLOYEES

Covered employers are only required to make health care expenditures to or on behalf of their “covered employees.” With some exceptions, an employee is covered by the HCSO if he or she works for an employer covered by the HCSO and:

- Is entitled to be paid at least the minimum wage;
- Has been employed by the employer for at least 90 calendar days; and
- Works at least eight hours per week in San Francisco.



However, covered employees do not include:

- Managerial, supervisory or confidential employees who earn more than the applicable salary exemption amount (for 2020, \$104,761 per year or \$50.37 per hour);
- Individuals who are eligible to receive benefits under Medicare or TRICARE;
- Employees who are employed by a nonprofit 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 the San Francisco Health Care Accountability Ordinance (HCAO).

In addition, employees may voluntarily choose to waive their right to have their employers make health care expenditures for their benefit by signing an [Employee Voluntary Waiver Form](#). However, an employee’s voluntary waiver is not valid unless the employee is receiving benefits through another employer.

EMPLOYER SPENDING REQUIREMENT

The HCSO requires covered employers to satisfy the ESR by making required health care expenditures on behalf of all covered employees at the following rates:

Employer Size	Number of Employees	2020 Expenditure Rate	2021 Expenditure Rate
Large	All employers with 100+ workers	\$3.08 per hour payable	\$3.18 per hour payable
Medium	Businesses with 20-99 workers Nonprofits with 50-99 workers	\$2.05 per hour payable	\$2.12 per hour payable
Small	Businesses with 0-19 workers Nonprofits with 0-49 workers	Exempt	Exempt

For this purpose, “hours payable” include both the hours for which an employee is paid and the hours for which the employee is entitled to be paid, including, but not limited to, paid vacation hours, paid time off and paid sick leave hours, but not exceeding 172 hours in a single month. However, hours payable includes only those hours during which the employee is working within the geographic boundaries of the City and County of San Francisco.

A “health care expenditure” is defined as any amount paid by a covered employer to its covered employees (or to a third party on behalf of its covered employees) for purposes of providing or reimbursing the cost of health care services for covered employees and their family members. Health care expenditures generally include any amounts paid for health care services for covered employees and their family members (including for health, dental and vision insurance).

These required health care expenditures must be made at least quarterly, within 30 days of the end of the preceding quarter. Covered employers can comply with the ESR through various options, including:

- Payments for health, dental and/or vision insurance;
- Payments into health savings accounts (HSAs) or health reimbursement accounts (HRAs);
- Costs incurred by the employer in the direct delivery of health care services for a covered employee;
- Payments to a covered employee to reimburse costs incurred for health care services; and
- Payments to the San Francisco [City Option Program](#).



Payments made directly or indirectly for workers' compensation or Medicare benefits do not qualify as health care expenditures. Similarly, increasing hourly wages, or otherwise giving employees extra money in their paychecks, is not a valid health care expenditure and does not satisfy the ESR.

Note that the ESR applies regardless of whether the covered employee waives employer-sponsored coverage. If the employee declines to participate in the employer's health plan, the employer must satisfy its ESR in some other manner.

EMPLOYER REPORTING AND RECORDKEEPING REQUIREMENTS

Covered employers must submit an Annual Reporting Form to the OLSE by **April 30 of each year**. This is a web-based form that must be submitted online, and becomes available on the [HCSO website](#) by April 1 each year. The OLSE strongly encourages employers to review the instructions for the Annual Reporting Form to ensure compliance with this reporting requirement. Employers may sign up for the [HCSO email list](#) to receive an email notification each year when the Annual Reporting Form is available.

On Feb. 25, 2020, San Francisco Mayor London Breed issued an [emergency proclamation](#) due to the COVID-19 pandemic. As a result of this emergency proclamation, the city cancelled the employer requirement to submit the 2019 HCSO Annual Reporting Form. This means that the 2019 Annual Reporting Form does not need to be submitted to OLSE. However, employers must continue to make health care expenditures on behalf of their covered employees by making City Option payments and/or paying for health insurance.

The HCSO (along with all other San Francisco labor laws) remains in full effect. HCSO-mandated health care expenditures are not a tax and, therefore, there are no deferrals for these expenditures. The OLSE expects that all covered employers will continue to fully comply with their legal obligation to make full payments within 30 days of the end of each quarter. The deadline for Q1 2020 expenditures was April 30, 2020.

In addition, covered employers must keep, for a period of four years from each covered employee's dates of employment, the following records:

- Itemized pay statements;
- The employee's address, telephone number and first day of work;
- Records of health care expenditures made, including calculations of health care expenditures required under the law for each covered employee and proof documenting that those expenditures were made each quarter of each year;
- Documentation supporting an employee's exemption from coverage (such as a signed Employee Voluntary Waiver Form) for each employee for whom the employer is claiming an ESR exemption; and
- Information demonstrating that the required health care expenditures were made quarterly (unless the employer meets the requirements for the exception for self-funded plans).

EMPLOYER NOTICE-POSTING REQUIREMENT

Covered employers must post the [HCSO Notice](#) in a conspicuous place at any workplace or job site where any covered employee works. The official OLSE Notice must be used; drafting and posting a different version will not satisfy the HCSO's requirement. The HCSO Notice must be posted in English, Spanish, Chinese and any other language spoken by at least 5 percent of the employees at the workplace. For employees working in a location that is not controlled by the



employer (for example, those working from home or outsourced to a third party), the employer must ensure that each employee is provided a copy of the HCSO Notice.

HEALTH CARE SURCHARGES

Businesses are neither required to, nor prohibited from, imposing surcharges (such as an extra fee or cost) on the goods or services they sell to consumers to offset the cost of complying with the HCSO. However, employers that elect to impose these surcharges must comply with specific requirements.

First, any covered employer who imposes a health care surcharge on its customers as a result of the HCSO must report the following information to the OLSE as part of its HCSO Annual Reporting Form each year:

- The amount collected from the surcharge for covered employee health care; and
- The amount spent on covered employee health care.

Second, if the amount collected from the surcharge is greater than the amount spent on covered employee's health care, the employer must spend the excess surcharges on health care for covered employees within a **full calendar year** (in addition to spending any health care surcharge funds collected in that year).

On May 1, 2009, the [State Board of Equalization](#) issued a special notice regarding the taxability of these surcharges. To reach the State Board of Equalization, please call (800) 400-7115.

PENALTIES

The maximum administrative penalties for failing to comply with the following HCSO provisions are as follows:

Violation of the HCSO	Maximum Administrative Penalty
Failure to make the required minimum health care expenditures within five business days of the quarterly due date (30 days after the conclusion of each quarter)	\$100 per employee for each quarter that the violation occurred
Failure to submit the Annual Reporting Form	\$500 for each quarter that the violation occurs
Retaliation against employees	\$100 per person who is the target of the prohibited action for each day that the violation occurs
Refusing to allow OLSE access to employer records	\$25 per worker whose records are not provided for each day that the violation occurs
Failure to maintain or retain accurate and complete records	\$500 for each quarter that the violation occurs
Failure to post the official HCSO Notice	\$25 per day for each workplace or job site where the notice is not posted