



Charon Planning Client Communication San Francisco Health Care Security Ordinance

San Francisco passed a health care reform law that requires employers with employees working within the City and County of San Francisco to spend a minimum amount of money on health care expenses for those employees. The law was challenged by an association of employers on ERISA grounds, and the court held for the association. The City appealed to the 9th Circuit, and that Court ruled the San Francisco Health Care Security Ordinance (HCSO) could become **effective on January 1, 2008** and remain in effect at least until the court makes its final ruling.

Any business that has employees working in San Francisco is potentially impacted by this law. Below we provide information needed to determine if your business is impacted, the impact of the law, and what action you need to take. This law does not replace the requirement for businesses that contract with San Francisco to offer health coverage to the employer's own employees.

Does the law apply to you?

The law applies to your business if it meets both of the following criteria.

1. You have, or are required to have, a San Francisco business registration certificate. This certificate is required of any individual or entity engaging in business in San Francisco for seven or more days a year.
2. You have an average of 20 or more employees in a calendar quarter, including full-time, part-time, seasonal, temporary, contracted, leased, or commissioned employees. This requirement is based on the "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code which includes your company and any other company in that group without regard to where the company and its employees are located. For example, if you have 5 employees working in San Francisco and 15 employees working in any other city or state, you satisfy this test.

What the law requires.

For each hour paid for an employee's work in San Francisco, you are required to contribute a minimum amount toward the employee's health expenses. If you do not meet this requirement under some employer sponsored arrangement, you will be required to make payments to the City of San Francisco. The amount you pay to San Francisco will depend on what amount, if any, you contribute under an employer sponsored program.

The amount you pay also varies based on your size as a small, medium or large employer, and whether you are a for profit or non-profit company. See the chart below for the required rate of contribution for each hour worked by an employee.

Charon Planning does NOT provide legal, tax or accounting consultation or advice. Charon Planning has provided you with this information and/or material strictly in its capacity as an employee benefits consulting firm. It is Charon Planning's recommendation that you seek appropriately specialized professional consultation regarding the information and/or material contained herein.



**Charon Planning Client Communication
San Francisco Health Care Security Ordinance**

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
	50-99 Employees*	\$1.17/hour		\$1.23/hour
Medium	20-49 Employees*	Not Applicable	\$1.17/hour	
	1-19 Employees*	Not Applicable		

**Business size is based on all employees regardless of where they are employed.
Non-profits with less than 50 employees are exempt from the spending requirement.*

Contributed amounts for health care, called “expenditures” in the law, include any amount paid by an employer for the purpose of providing health care services or for reimbursing the cost of such services through the following types of plans:

- employer subsidies for insured and self-insured health coverage, including dental and vision plans;
- employer contributions to a health care spending account (e.g., HSA, HRA, FSA);
- payments to the City of San Francisco for the employee’s membership in the Healthy San Francisco Program, or to maintain an employee’s medical reimbursement account with the City.

Action

The following are the steps required to comply with this law, including determination and satisfaction of the financial obligation, recordkeeping and reporting.

Ø Decide how you will meet your financial obligation.

The decision does not need to be the same for all classes of employees. An employer can:

1. Make payments to the City of San Francisco on behalf of employees working in San Francisco.

Charon Planning does NOT provide legal, tax or accounting consultation or advice. Charon Planning has provided you with this information and/or material strictly in its capacity as an employee benefits consulting firm. It is Charon Planning’s recommendation that you seek appropriately specialized professional consultation regarding the information and/or material contained herein.



Charon Planning Client Communication San Francisco Health Care Security Ordinance

2. Sponsor an insured or self-insured group health care plan and make a contribution for that plan on behalf of the employees for that plan that at least meets the minimum requirement.
3. Make a contribution to a health savings account, health care reimbursement account or flexible spending account that at least meets the minimum requirement.
4. Reimburse health care expenses as incurred by the employee up to at least the minimum expenditure rate.

Ø Track hours worked by employees within San Francisco on a quarterly basis.

In order to calculate the required health contribution, an employer must track the hours worked in San Francisco by Covered Employees. The definitions of Covered Employees and Excludable Employees shown below identify which employees are entitled to employer expenditures and which employees may be excluded.

Covered Employees are employees who:

1. Are entitled to a minimum wage under the San Francisco Minimum Wage Ordinance; and
2. Have been employed by you for 90 calendar days the 90 days need not be continuous, consecutive, or completed in the same calendar year, and includes any period of leave to which the employee is legally entitled); and
3. In a particular week performs at least the 10 hours* of work in the city and the county of San Francisco. If the employee's hours vary, the employee's weekly hours will be based on the average hours worked per week during the quarter.

*Beginning January 1, 2009 the number of hours will change to 8 hours.

4. Covered employees include employees who decline coverage unless they sign the Voluntary Waiver Form (see Exhibit A) as proof that they receive health care benefits through another employer as an employee, or as the covered dependent of another person.

Excludable Employees are:

1. Managerial, supervisory or confidential employees unless the person's annual earnings were under \$74,588 (or \$35.85 hourly) in 2007. The earnings amount will be increased each succeeding year based on the prior year's increase in the

Charon Planning does NOT provide legal, tax or accounting consultation or advice. Charon Planning has provided you with this information and/or material strictly in its capacity as an employee benefits consulting firm. It is Charon Planning's recommendation that you seek appropriately specialized professional consultation regarding the information and/or material contained herein.



Charon Planning Client Communication San Francisco Health Care Security Ordinance

Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose metropolitan statistical area.

2. Persons who receive benefits under Medicare or Tricare/Champus.
3. Persons employed by a non-profit corporation for up to one year as trainees in a bona fide training program.
4. Persons who sign the Employee Voluntary waiver form as proof they receive health care benefits through another employer as an employee, or as the covered dependent.
5. Employees who do not work the minimum of 10 (8 in 2009) hours per week in San Francisco.

Based on these definitions, determine the total number of hours worked by each Covered Employee for the reporting period.

- Quarterly reporting is based on standard calendar quarters (e.g., the first quarter is January 1 through March 31).
- For each employee, their eligibility begins on the first day of the calendar month following the first 90 calendar days after the date of hire. This 90 days does not need to be consecutive, continuous, or completed in the same calendar quarter. While an employee may have been employed during the full calendar quarter, only the hours worked after this eligibility period should be tracked.

Ø Calculate the required health contribution you are required to make each quarter for each Covered Employee

- Under an insured health expense plan, if the average expenditure for employees under that plan meets or exceeds the applicable expenditure rate, your financial obligation is satisfied for those Covered Employees insured under that plan. The average expenditure is:

the total amount of health care expenditures made by you under the plan
the total number of hours paid* to those employees.

*Paid hours include hours worked, paid vacation hours, paid time off, and paid sick leave. For employees who work both in and outside of San Francisco, paid hours that are not actually worked (e.g., paid vacation hours, paid time off, paid

Charon Planning does NOT provide legal, tax or accounting consultation or advice. Charon Planning has provided you with this information and/or material strictly in its capacity as an employee benefits consulting firm. It is Charon Planning's recommendation that you seek appropriately specialized professional consultation regarding the information and/or material contained herein.



Charon Planning Client Communication San Francisco Health Care Security Ordinance

sick leave) will be calculated on a pro-rata basis.

- Under a self-insured health expense plan, if the preceding year's average expenditure for the employees covered under the plan, meets or exceeds the applicable expenditure rate, your financial obligation is satisfied for those employees who are Covered Employees under that plan.
- For your Covered Employees **not** covered under an insured or self-funded health expense plan, calculate your health expenditure responsibility on an individual basis for each employee. This category usually includes, but is not limited to, part-time or temporary employees who are not eligible for your group medical plan.

To calculate your responsibility per employee, multiply (a) the total number of hours paid to the employee for work done in San Francisco not to exceed 172 hours in a single month or 516 hours in a single quarter by (b) your health care expenditure rate determined by the table above.

This calculated amount is the minimum expenditure you are required to make into an FSA, a reimbursement account, or to the City of San Francisco on behalf of those employees not covered under any group medical plan.

Ø **Timing and Manner of Health Care Expenditures.**

Generally, health care expenditures must be made regularly to or on behalf of each Covered Employee on a quarterly basis, and not later than 30 days after the end of the preceding calendar quarter.

If you use the average expenditure method described above you are not required to make expenditures under such plans quarterly. You are permitted to make regular expenditures prospectively or before the end of the quarter in order to obtain health care or health care coverage for a Covered Employee during the quarter.

If you choose to meet your financial obligations under the law by making payment to San Francisco on behalf of the employee, you must provide the Notice of Payment to the City (see Exhibit B) to that employee.



Charon Planning Client Communication San Francisco Health Care Security Ordinance

Ø Recordkeeping.

You are required to keep the following for each employee for a four year period that begins with the Covered Employee’s date of employment.

- Itemized pay statements that conform to Section 226 of the California Labor Code.
- The employee’s address, telephone number, date of first day of work.
- Records sufficient to establish compliance with the financial obligations of this law, including records of health care expenditures made, calculations of health care expenditures for each covered person, and proof that the expenditures were made at least quarterly each year.
- The signed Employee Voluntary Waiver forms.
- A copy of the Employer Notice of Payment to the City (see Exhibit B) sent to employees for whom payment was made.

Ø Annual reporting requirement.

You will receive an HCSCO Mandatory Annual Reporting form (see Exhibit C) from the city. This form will document your health care expenditures for the year. The form is to be completed and returned with your annual business registration submission to San Francisco.

Ø Penalties

VIOLATION	CORRECTIVE ACTION	ADMINISTRATIVE PENALTY
Failure to make the required health care expenditures (Admin. Code §§ 14.3(a) & 14.4(e)):	The party shall be ordered to make the required health care expenditure on behalf of each employee or person whose rights under this Ordinance was violated, and/or to reimburse the individual for any and all out-of-pocket medical expenses incurred by that individual for the period during which the employer was in violation of this Ordinance, up to the amount of the required health care expenditure. This payment shall be made retroactively, from the date the expenditure was due, and continuing until the case is resolved to the satisfaction of the OLSE.	The penalty assessed shall be up to one-and-one-half times the total expenditures that 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. The total penalty for this violation shall not exceed \$1,000 for each employee for each week that such expenditures were or are not made.

Charon Planning does NOT provide legal, tax or accounting consultation or advice. Charon Planning has provided you with this information and/or material strictly in its capacity as an employee benefits consulting firm. It is Charon Planning’s recommendation that you seek appropriately specialized professional consultation regarding the information and/or material contained herein.



Charon Planning Client Communication San Francisco Health Care Security Ordinance

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)):	The party shall be ordered to cooperate with OLSE, effective immediately.	The penalty assessed shall be \$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)):	The party shall be ordered to provide the OLSE with reasonable access to records of health care expenditures.	The penalty assessed shall be \$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):	The party shall be ordered to produce the records and documents outlined in Regulation 7.2 and to cooperate with the OLSE in reconstructing the records it should have maintained.	The penalty assessed shall be \$500
Failure to satisfy the annual reporting requirement (Admin. Code §§ 14.3(b) & 14.4(e)):	The party shall be ordered to satisfy its annual reporting requirement.	The penalty assessed shall be \$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 7.15):	The party shall demonstrate that such reduction was not done for the purpose of evading the obligations of this Ordinance, but for a valid business reason, or shall be in violation of this Ordinance. If unable to do so, the party shall be ordered to make the required health care expenditure on behalf of each employee or person whose rights under this Ordinance was violated and/or to reimburse the individual for any and all out-of-pocket medical expenses incurred by that individual for the period during which the employer was in violation of this Ordinance, up to the amount of the required health care expenditure. This payment shall be made retroactively, from the date of the expenditure was due, and continuing until the case is resolved to the satisfaction of the OLSE.	The penalty assessed shall be \$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):	The party shall be ordered to cease or cause to cease, any and all retaliatory and/or discriminatory actions and, if applicable, to reinstate or otherwise compensate an employee whose rights under this Ordinance was violated.	The penalty assessed shall be \$100 for each worker or person whose rights under this Ordinance was violated for each day that the violation occurred or occurs.

Charon Planning does NOT provide legal, tax or accounting consultation or advice. Charon Planning has provided you with this information and/or material strictly in its capacity as an employee benefits consulting firm. It is Charon Planning's recommendation that you seek appropriately specialized professional consultation regarding the information and/or material contained herein.

EXHIBIT A

EMPLOYEE VOLUNTARY WAIVER FORM

Effective 2008, San Francisco law requires your employer to make health care expenditures on your behalf. A health expenditure is an amount of money paid by your employer to you or to a third party for the purpose of providing you with health care services. For example, your employer may:

- make payments to enroll you in a health insurance program,
- reimburse you for the costs of health care services you get on your own,
- make payments on your behalf to the City's new *Healthy San Francisco* program, or
- establish and maintain a reimbursement account for your health care expenses.

You have been asked to complete this Voluntary Waiver Form because your employer is requesting a waiver from the requirement described above. Your employer may obtain a waiver from this legal requirement if you are currently receiving care services through another employer, either as an employee of that other employer or by virtue of being the spouse, domestic partner, or child of a person employed by that employer. To support a waiver request, your employer must obtain a new signed Voluntary Waiver Form from you each year, updated as necessary to reflect any changes to the information provided.

Even if you receive health care services through another employer, you are entitled to receive health care services from your employer. If you sign this form, your employer may stop making a mandatory health care expenditure to you or on your behalf. If you want your employer to provide you with access to health care services, do not sign this form. It is illegal for your employer to force or to pressure you to sign this form.

You have the right to cancel or revoke this voluntary waiver at any time. Your revocation must be submitted in writing. If you revoke this waiver, your employer will be required to make health care expenditures to you or on your behalf.

Employee Name _____ Name of Employer Requesting Waiver: _____
Employee Address _____ Employer Address: _____
Employer Contact Person: _____
Employer Telephone No.: _____

I hereby certify that I receive health care services through another employer or through my spouse, domestic partner, or parent as indicated below:

If you receive health care services through another employer whom you work for and wish to provide a waiver to your employer listed above, please provide the information below:

Name of Employer Providing Health Care Services: _____ Type of Coverage Provided to You:
 health insurance (provide name of provider below)
Employer Address: _____
Employer Contact Person: _____ SF Health Access Program/*Healthy San Francisco*
Employer Telephone No.: _____ reimbursement/direct payment of health care expenses
 other (describe) _____

If you receive health care services through the employer of your parent, spouse, or domestic partner and wish to provide a waiver to the employer listed above, please provide the information below:

Name of Person Whose Coverage Extends to You: _____ Type of Coverage Provided to You:
 health insurance (provide name of provider below)
His/Her Relationship to You: _____
Name of His/Her Employer: _____ SF Health Access Program/*Healthy San Francisco*
His/Her Employer Address: _____ reimbursement/direct payment of health care expenses
Employer Contact Person: _____ other (describe) _____
Employer Telephone No.: _____

I hereby waive the right to the health care expenditures described above, made to me or my behalf by the employer listed above.

Employee's Signature Today's Date

If you have any questions about your employer's obligations under the Health Care Security Ordinance, please call 554-7892 or visit www.sfgov.org/olse/hcso.

Para asistencia en Español, llame al 554-7892.
需要中文幫助，請電 554-7892.

Complete this section ONLY if you wish to revoke a Voluntary Waiver Form that you have signed and provided to your employer. If you wish to waive your right to health care expenditures made to you or on your behalf by my employer, do NOT complete this portion below.

REVOCAION OF VOLUNTARY WAIVER FORM

I no longer wish to waive the right to health care expenditures made to me or my behalf by my employer, pursuant to the San Francisco Health Care Security Ordinance.

Employee's Signature Today's Date

OLSE Regulations Implementing the Employer Spending Requirement of the San Francisco Health Care Security Ordinance (HCSO)
APPENDIX A: VOLUNTARY WAIVER FORM

Copies of this form may be downloaded from this web address:
http://www.sfgov.org/site/olse_index

EXHIBIT B

NOTICE TO EMPLOYEE OF PAYMENT TO THE CITY

Employee Name: _____	Employer Name: _____
Employee Address: _____	Employer Address: _____
	Employer Contact Person: _____
	Employer Telephone No.: _____
	Employer Tax ID#: _____

Effective 2008, San Francisco law requires your employer to make health care expenditures on your behalf. A health care expenditure is an amount of money paid by your employer to you or to a third party for the purpose of providing you with access to health care services.

For example, your employer may:

- make payments to enroll you in a health insurance plan,
- reimburse you for the costs of health care services you get on your own,
- make payments to the City so that the City may enroll you in its health care program.

Your employer has provided this Notice to inform you that it has chosen to make its required health care expenditures by making payments on your behalf to the City, so that the City may:

- (1) enroll you in *Healthy San Francisco*, a program that provides participants with comprehensive health care services, or
- (2) establish and maintain a Medical Reimbursement Account, which will reimburse you for medical expenses. For more information on *Healthy San Francisco* and the Medical Reimbursement Account, visit www.sfhp.org/HealthySanFrancisco. [NOTE: Website may change in 9/2007]

To receive these health care benefits, you must enroll in the City's program. You will receive a separate packet of information from *Healthy San Francisco* with instructions on how to enroll in this program. Be sure to:

- (1) enroll as soon as possible, and
- (2) bring this notice with you when you enroll.

If you do not receive your information packet, please contact *Healthy San Francisco* at (415) [INSERT TELEPHONE #, available 9/2007].

If you have any questions about your employer's obligations under the Health Care Security Ordinance, please call 554-7892 or visit www.sfgov.org/olse.

**Para asistencia en Español, llame al 554-7892.
需要中文幫助，請電 554-7892.**

OLSE Regulations Implementing the Employer Spending Requirement of the San Francisco Health Care Security Ordinance (HCSO)
APPENDIX B: NOTICE TO EMPLOYEE OF PAYMENT TO THE CITY

**Copies of this form may be downloaded from this web address:
http://www.sfgov.org/site/olse_index**

