



# Health Care Security Ordinance

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Office of Labor Standards Enforcement

# Overview

- The HCSO has been around since 2008; it is a **spending requirement**. It requires employers to spend a certain amount of money on employee health care.
- There are different ways to comply with the HCSO.



# Who's a Covered Employer?

Minimum size threshold based on total number of persons performing work in ALL locations throughout the world, not only San Francisco

- For-profit employers: 20+ persons perform work per quarter
- Nonprofit employers: 50+ persons perform work per quarter

**Exception: government employers are not covered by the HCSO**



# Who's a Covered Employee?

- Employed for at least 90 calendar days for the company organization; and
- Works at least 8 hours per week **in San Francisco** in a quarter (104 hours/quarter)
  - Note: the SF airport is *not* within the geographic boundaries of San Francisco

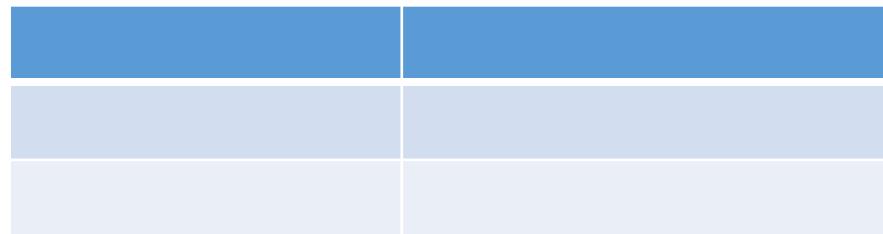
→ This means that ***nearly all*** of a company's San Francisco employees are covered by the HCSO. The few categories of workers who are exempt are addressed later in the presentation.

*The employee's place of residence does not matter; what matters is where the work is performed.*



# Employer Obligation #1 (Expenditures): Satisfy Employer Spending Requirement

- Expenditures must be made quarterly.
- Expenditure rate is based on employer's *global* workforce size, not just those in San Francisco. Companies with under 100 workers have a lower spending rate.



**\*Health Care Expenditure Rates Change Annually\***



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# Employer Obligation #1 (Payable Hours): Satisfy Employer Spending Requirement

- Multiply the expenditure rate by the employee's payable hours to get the correct quarterly spending amount.
- Payable hours: hours worked in SF or hours for which employee is *entitled to be paid* (sick time, vacation, overtime). Capped at 172h/mo.
- What this looks like for a **full time** employee:

Employer size	2022 rates
Large (100+ workers)	\$3.30/hr (rate) x max 172h/mo = \$567.60/mo or \$1,702.80/Q
Medium (20-99 workers)	\$2.20/hr (rate) x max 172h/mo = \$378.40/mo or \$1,135.20/Q



# Employer Obligation #1 (Options): Satisfy Employer Spending Requirement

Options to satisfy Employer Spending Requirement:

- Provide health insurance:
  - Payments for insurance premiums, including medical, dental, and/or vision insurance for covered employees and/or their spouses, partners, children, or other dependents
- Contribute to SF City Option (**managed by SF Dept of Public Health, not OLSE. For more information see [www.sfcityoption.org](http://www.sfcityoption.org)**)
- Contribute to a Health Savings Account, Medical Savings Account, or other irrevocable reimbursement account
- Combination of these options.



# Employer Obligation #1 (Deadlines): Satisfy Employer Spending Requirement

## Deadlines:

- Expenditures must be made within 30 days of the end of the quarter. Exception for self-funded health plans which are calculated annually
- **Quarterly Deadlines:**
  - Quarter 1: Apr. 30
  - Quarter 2: July 30
  - Quarter 3: Oct. 30
  - Quarter 4: Jan. 30



# Employer Obligation #2: Mandatory Poster



**Official 2022 Notice**  
**You may be entitled to employer health care spending**

Most workers in San Francisco are entitled to employer health care spending, if you:

- Work at least **8 hours** per week in San Francisco
- Have been employed by your employer for about 3 months (**90 days**)
- Work for a business that has **20 or more workers** worldwide or a non-profit with 50 or more workers worldwide

**2022 Required Health Care Spending Rates**

Employer size	Required Rate
20-99 workers worldwide (or nonprofits with 50-99 workers)	\$2.20/hour
100 or more workers worldwide	\$3.30/hour

Your employer may choose how they spend the money. For example, your employer may pay for health, dental, or vision insurance, make payments to the SF City Option program, etc.

The City may investigate possible violations of the law, and can order employers who violate the law to pay penalties and make payments to workers. Employers may not punish employees who file a complaint or who cooperate with an investigation.

If you have any questions, please contact your employer or the San Francisco Office of Labor Standards Enforcement at (415) 554-7892 or [HCSO@sfgov.org](mailto:HCSO@sfgov.org). You can also visit the OLSE website at [www.sfgov.org/olse/hcso](http://www.sfgov.org/olse/hcso).

**Aviso Oficial 2022 - Ordenanza de Seguridad del Cuidado de la Salud (HCSO)**  
**Es posible que tenga derecho a los gastos de atención médica del empleador**

La mayoría de los trabajadores en San Francisco tienen derecho a los gastos de atención médica del empleador, si usted:

- Trabaja por lo menos **8 horas** a la semana en San Francisco
- Ha estado trabajando por su empleador durante aproximadamente unos 3 meses (**90 días**)
- trabaja para una empresa que tiene **20 o más trabajadores** en todo el mundo o una organización sin fines de lucro con 50 o más trabajadores en todo el mundo

**Tasas de gasto en atención médica requerida 2022**

Tamaño de la empresa	Tasa obligatoria
20-99 trabajadores en todo el mundo (o entidades sin fines de lucro con 50-99 trabajadores)	\$2.20/hora
100 o más trabajadores en todo el mundo	\$3.30/hora

El empleador puede elegir cómo gastar el dinero. Por ejemplo, su empleador puede pagar un seguro médico, dental o de visión, hacer pagos al



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# Employer Obligation #3: Maintain Records

Maintain records for four years of:

- Payable hours;
- Health care expenditures made (including insurance enrollment and invoices);
- HCSO waiver forms, if any;
- Anything else you'd need to demonstrate compliance (work location, payroll records showing start & end dates, City Option contributions, etc)



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# Employer Obligation #4: Annual Reporting Form

- Available April 1 each year; due April 30<sup>th</sup> each year
- Purpose: to demonstrate total health care spending for SF employees, and demonstrate the different compliance options employer utilized
- Additional webinars and resources available on OLSE website
- Notices about Annual Reporting Form mailed to physical address listed on employer's business registration with City of SF
- Emailed to all employers on OLSE's email list



# Exemptions to HCSO: Part 1

Very few employees are exempt from these requirements. Safest approach is to assume they are all covered by HCSO and entitled to health care spending.

- Exempt: employees eligible for MediCare (program for ages 65+) or TriCare (for veterans). Note: employees on Medi-Cal are **not** exempt, and are still covered by HCSO.
- Exempt: employees who are covered by Health Care Accountability Ordinance (only applies if employer is a City contractor or lessee).
- Exempt: temporary non-profit employees in specific training programs (contact OLSE for more info).



# Exemptions to HCSO: Part 2

Exempt: managerial & supervisory employees who earn a certain salary.

- Salary amounts change annually;
- HCSO has a specific definition for “managerial” and “supervisory” that is different from other laws;
- **Always** contact OLSE for more information. **Do not** assume that all highly paid employees are exempt. **Do not** assume that any employee with the word “manager” in their title is exempt.



# Exemptions to HCSO: Part 3

- Exempt: Employees who sign voluntary waiver forms. Form must be:
  - (1) OLSE's specific waiver form for HCSO (**not** simply a form in which employee declines insurance);
  - (2) Signed voluntarily (free of coercion by employer);
  - (3) Employee **must** have health care services from **another employer** (spouse/domestic partner's job; parents' job; employee's other job) AND be willing to waive their right to an alternate expenditure.
- Waivers good for one year only, can be revoked by the employee at any time, and cannot be retroactive.
- Employees who buy their own insurance, or who have Medi-Cal, or are uninsured may **not** sign a waiver.
- Waivers are the exception, not the rule; most employees do not want to sign them because they are entitled to an expenditure even if they have insurance from elsewhere.



# Other issues: self-funded plans

- Employers who have self-funded medical, dental and vision plans must still comply with the employer spending requirement at the same hourly rate as other Covered Employers
- However, self-funded plans are calculated differently, and the employer has to satisfy the spending requirement annually, rather than quarterly, *only for the employees enrolled in the self-funded plans*. For employees enrolled in traditional, fully funded health plans, the quarterly deadlines still apply



# Other issues: Surcharges

- The HCSO neither prohibits nor requires an employer to pass on the costs of HCSO compliance to its customers. However, if an employer *chooses* to implement a surcharge on customers to cover the costs, the employer must:
  - Ensure that the full amount collected is used towards the cost of satisfying the spending requirement for its Covered Employees; and
  - Keep record of the amount collected and the amount spent.



# Common Compliance Issues

- Failing to make any health care expenditures for anyone;
- Spending too little for health insurance;
- Disregarding part time workers who work 8+ hours/week and may not qualify for employer's health insurance program;
- Assuming employees are exempt from the HCSO when they are not;
- Failing to make health care expenditures for employees with other health care coverage;
- Surcharges (collecting \$ from customers but then not spending it on health care)



# Consequences

- Employers may face enforcement actions, including but not limited to audits; assessment of restitution, interest, and penalties; administrative hearings and/or court actions.

*HOWEVER...*

- OLSE does not punish employers who contact us to ask questions, or who realize they have a compliance issue and want our help figuring how to remedy it.
- It is always better for an employer to proactively contact OLSE than to have us take enforcement action.





# Frequently Asked Questions



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# FAQ 1

**Q:** I offer insurance to my SF employees; isn't that enough to comply with the HCSO?

**A:** It depends. The employer must (1) ensure the insurance is sufficiently expensive to satisfy the expenditure rate for that year; and (2) ensure that all Covered Employees are enrolled in the plan.

If the answer to either of the above is “no,” employer should (1) add additional expenditures to the insurance; and (2) find a way to comply for the employees not on the insurance.

[See more info here: <https://sfgov.org/olse/e-making-health-care-expenditures#insurance>](https://sfgov.org/olse/e-making-health-care-expenditures#insurance)



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## FAQ 2

**Q:** Do I need to make expenditures for employees who already have health insurance from elsewhere?

**A:** Most of the time, yes. See here: <https://sfgov.org/olse/e-making-health-care-expenditures#7>

**Q:** What do I do if I've offered insurance and the employee declines it?

**A:** In most situations, you'll need to find another way to make the expenditures. Many employers use the City Option program as a way to comply for the folks who are not enrolled in the company's insurance plan. See here:  
<https://sfgov.org/olse/e-making-health-care-expenditures#eesoptout>



# FAQ 3

**Q:** What is the difference between the HCSO and the City Option?

**A:** The HCSO (Health Care Security Ordinance) is the law that requires employers to spend money on health care services. The HCSO is enforced by the OLSE. The OLSE also offers an advice hotline for employees and employers. The City Option is a health care program run by the San Francisco Department of Public Health. Payments to the City Option is *one of the ways* employers can comply with the HCSO.

**Q:** What is the City Option, and what do my employees get if I contribute to it?

**A:** Employees will get an individual MRA (Medical Reimbursement Account) that they can use for out-of-pocket medical expenses such as prescriptions, co-pays, premiums, and many other items. Employers must notify employees about the contributions and provide correct contact info.



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# FAQ 4

**Q:** I thought I only had to worry about employees who aren't on my health plan. Aren't those the only ones covered by this law?

**A:** No. All Covered Employees (basically, all SF employees) must receive their full health care expenditures. The employer may or may not be satisfying the expenditure requirement with the insurance—it depends how much the insurance costs.

**Q:** Doesn't this law apply only to people who live in SF?

**A:** No. The employee's place of residence does not matter. The *work location* (including remote work) is what matters.



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# FAQ 5

**Q:** Do I have to comply with this for my highly paid employees?

**A:** Employee salaries do not matter. The only time it comes into play is if the employee has a salary threshold above a certain amount **and** his/her job duties meet the HCSO's definition of a managerial/supervisory employee. For example, a CFO or CEO will not be covered by the HCSO. A "project manager" will be unlikely to satisfy the definition.



# FAQ 6

**Q:** I'm confused about waivers. When are they required?

**A:** They're not required! The employer should just be providing the health care expenditures. In rare situations, if an employee has health care services from another employer, and is willing to waive their right to an alternate expenditure from your company, then they can be asked to sign an HCSO waiver form (different from the 'opt-out' form your insurer may collect). This must be done free of coercion. If the employee signs it, that means the employer does not have an expenditure obligation for that person for a one-year period, unless the employee revokes it.

**Note: waivers are the exception, not the rule.**



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# FAQ 7

**Q:** Where can I find more information?

**A:**

- **Sign up for labor law updates, including HCSO news**
- **OLSE/HCSO Website**
  - Administrative Guidance
  - OLSE Official Notices
  - Annual Reporting Form
  - Employee Voluntary Waiver Form
- **Attend a webinar (offered monthly)**
- **Email us: [HCSO@sfgov.org](mailto:HCSO@sfgov.org)**
- **Call us: (415) 554-7892**



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# Webpage Tour



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# Thank you!

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