

GENERAL SERVICES AGENCY  
OFFICE OF LABOR STANDARDS ENFORCEMENT  
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**Frequently Asked Questions  
regarding the  
Employer Spending Requirement of the  
San Francisco Health Care Security Ordinance  
Administrative Code Chapter 14**  
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**Overview**

**1. Q: What is the Health Care Security Ordinance and what does it require?**

**A:** The Health Care Security Ordinance is a San Francisco law that (1) creates an Employer Spending Requirement enforced by the Office of Labor Standards Enforcement and (2) requires the Department of Public Health to create a Health Access Plan, now called *Healthy San Francisco*. The Employer Spending Requirement requires Covered Employers to spend a minimum amount of money on Health Care Expenditures for their Covered Employees.

For more information about the Health Access Plan/*Healthy San Francisco*, a program designed to make healthcare services accessible and affordable to uninsured San Francisco residents, visit <http://www.HealthySanFrancisco.org> or call (415) 615-4500.

**2. Q: Does the Ordinance require that the Employer Spending Requirement be paid to the City?**

**A:** No, the Ordinance simply requires that Covered Employers make a minimum Health Care Expenditure; in deciding how to make the Expenditure, employers have many options to choose from, such as private health insurance plans, the City's Health Access Plan/*Healthy San Francisco* program, or health spending or medical reimbursement accounts.

**3. Q: Does the Ordinance require employers that already provide health insurance to their employees to spend more money on their employees?**

**A:** Not necessarily. The premiums that a Covered Employer pays for medical insurance for its Covered Employees count toward its required Health Care Expenditures, so if that amount meets the minimum required under the Ordinance, the Covered Employer will have no further obligations. However, if the amount spent does not meet the minimum expenditure amount set by the Ordinance, the Covered Employer must decide how it will spend the difference. The employer could choose a health insurance plan that provides more comprehensive benefits, such as dental and visions benefits, or increase its

contribution towards the health care premiums while decreasing the portion paid by the employee. Another option is to allow the employee to be reimbursed, up to that difference, for out-of-pocket health care expenses, such as co-payments for doctor's visits or prescription medications. Yet another way to spend the remainder of the minimum spending requirement is to send a check to the City to create a medical reimbursement account for the Covered Employees.

**4. Q: I currently provide benefits to all full-time employees, but only provide benefits to part-time employees who work more than 20 hours per week. Does the Ordinance require me to do more?**

**A:** Possibly. Minimum Health Care Expenditures are required for all Covered Employees working at least eight hours per week in San Francisco. Thus, Covered Employers who currently provide health benefits to full-time employees, but not to part-time employees, must begin making Health Care Expenditures for all part-time employees who work at least eight hours per week in San Francisco.

**5. Q: What if my employees get health benefits through another employer? Am I still required to make Health Care Expenditures for those employees?**

**A:** Not necessarily. Covered Employers that obtain a Voluntary Waiver signed by each Covered Employee who already has health coverage through another employer will not be required to make Health Care Expenditures for those employees. Keep in mind, however, that the waiver will not be valid unless the health benefits are provided either by another employer of the Covered Employee or by the employer of that Covered Employee's spouse, domestic partner, or parent.

### **Effective Dates**

**6. Q: When does the Employer Spending Requirement take effect?**

**A:** The Employer Spending Requirement takes 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.

Nonprofit employers with fewer than 50 employees and Small Employers with fewer than 20 employees are exempt from this law.

### **Scope of Employer Coverage**

**7. Q: Are public sector employers covered by the Ordinance?**

**A:** The Ordinance does not cover public sector employers, such as the City and County of San Francisco, the San Francisco Unified School District, or the state or federal

government because public sector employers are not required to register with the San Francisco Office of Treasurer & Tax Collector to do business in the City. Under the Ordinance, a Covered Employer is one that is “required to obtain a valid San Francisco business registration certificate from the San Francisco Tax Collector's office.”

Pursuant to the SF Business & Tax Regulations Code, any individual or entity engaging in business in San Francisco for seven or more days a year must obtain a business registration certificate from the Office of Treasurer & Tax Collector within 15 days of business operation. For more information about business registration, visit [www.sfgov.org/tax](http://www.sfgov.org/tax) or call (415) 554-4400.

**8. Q: Are employers who contract with the City, including those with existing contracts, covered by the Ordinance?**

**A:** Yes, City contractors are subject to the Ordinance and must comply with its requirements if they meet the definition of a Covered Employer.

Note that the Health Care Security Ordinance exempts employees who are covered by the Health Care Accountability Ordinance (HCAO); thus, City contractors who are also subject to the HCAO need not make HCSO expenditures for those employees who receive health care benefits under the HCAO.

However, this exemption does not change the City contractor’s HCSO obligations with respect to any employees who are not covered by the HCAO. For more information regarding the HCAO, please email [HCAO@sfgov.org](mailto:HCAO@sfgov.org), call 554-6292, or visit <http://www.sfgov.org/olse/hcao>.

**9. Q: Are employers who contract with other public agencies covered by the Ordinance?**

**A:** Generally, non-City public sector contractors, such as those that contract with the Federal government or the State of California, are not covered by the Ordinance if they are “instrumentalities” of the public sector agency, or doing work that the agency is mandated to perform.

**10. Q: Does the Ordinance cover private businesses located on other public property, such as public property owned by the state or federal government, San Francisco State University, or the San Francisco Unified School District?**

**A:** It depends. The Ordinance does not cover private businesses located in “federal enclaves,” such as the Presidio, Fort Mason, and the entire Golden Gate National Recreation Area (GGNRA). However, private businesses located on other public property generally will be covered if they are doing work unrelated to the leasing agency. A private café, florist, or gym that is located on state or federal property, for example, would be covered by the Ordinance because its services are unrelated to the governmental mission of the leasing agency.

## Covered Employers

**11. Q: Are all of an employer's employees counted in determining the size of a business? Are employees who work outside of San Francisco included, as well?**

**A:** Yes; for the purpose of calculating employer or business size, ALL persons performing work for compensation during a given week must be counted, regardless of whether the persons work in San Francisco.

An employer with 100 or more employees is a Large Employer, and those with 20 to 99 employees are Medium-size Employers. Nonprofits with fewer than 50 employees and Small Employers (those with fewer than 20 employees) are exempt from this law.

**12. Q: Are owners covered by the Ordinance for the purpose of determining employer size?**

**A:** Owners who perform work for compensation for the business are considered employees and must be counted as such in determining whether the business is a Covered Employer.

**13. Q: Is an employer that is based outside of San Francisco but has employees who perform work in the city covered by this law?**

**A:** Yes, regardless of where the employer is located, all Covered Employers who have employees who perform work within the geographic boundaries of San Francisco must make the required Health Care Expenditures for each Covered Employee.

**14. Q: What if the number of employees changes from week to week?**

**A:** For businesses employing a fluctuating number of employees during a quarter (13 weeks), employer size is based on the weekly average number of persons performing work for compensation during that quarter. Thus, a business that employs 5 persons during the first 6 weeks of the quarter and 20 persons during the last 7 weeks of the quarter would not be covered because it has employed an average of only 13 persons per week during that quarter:

$[(5 \text{ persons/week} \times 6 \text{ weeks}) + (20 \text{ persons/week} \times 7 \text{ weeks})] / 13 \text{ weeks} = 13 \text{ persons/week}$

Note, however, that averaging is only permitted where the number of employees fluctuates from week to week.

**15. Q: If an employer operates one business with three separate stores or locations in San Francisco, each with seven employees, is it considered a Small Employer under the Ordinance?**

**A:** No. For the purpose of calculating employer size, employees performing work in different locations operated by the same employer are employees of that employer. The

seven employees at each of the three stores total 21 employees for this employer; thus, the employer is a Medium-Size Business and is covered under this Ordinance.

**16. Q: What if an employer owns and operates three unrelated businesses, such as a video store, a laundromat, and a pizzeria, each with seven employees?**

**A:** Whether the businesses are covered by this Ordinance depends on how those businesses are organized. Businesses that are a "controlled group of corporations" for purposes of income tax filing are considered one employer under the Ordinance, and all employees of each entity would be counted to determine the size of the employer. If the three businesses are incorporated and not members of a "controlled group of corporations" for purposes of income tax filing, then each is considered a separate business, and the employees of each separate entity will be counted to determine the size of each employer.

Employees of businesses that are not incorporated are counted as working for one employer if the businesses are under common control. For purposes of this Ordinance, "under common control" means either (a) one person (individual, estate, or trust) has at least an 80 percent ownership interest in the businesses, or (b) two to five persons hold more than a 50 percent ownership interest in the businesses.

The same analysis applies if one or more of the businesses is incorporated, but others are not. Note that while some corporations may be excluded from the "controlled group of corporations" analysis for income tax purposes, they are not excluded from the definition of "employer" under Section 14.1(b)(4) of the HCSO.

**17. Q: Are temporary staffing and leasing agencies or professional employer organizations responsible for making health care expenditures under this Ordinance?**

**A:** Both the client and the temporary staffing, leasing, professional employer, or similar entity may be considered a Covered Employer under this Ordinance, and each Covered Employer shall have an obligation to ensure that the Employer Spending Requirement has been met.

In the context of a temporary staffing, leasing, professional employer, or other entity serving the same or similar function, the OLSE will determine whether the entity is an employer under the Ordinance by reference to the factors outlined in California Unemployment Insurance Code § 606.5. (California statutes may be downloaded from <http://www.leginfo.ca.gov/calaw.html>.)

### **Covered Employees**

**18. Q: Are owners considered Covered Employees under the Ordinance?**

**A:** Although owners who perform work for compensation must be counted for the purpose

of determining employer size, owners are not considered Covered Employees because they are not entitled to payment of the minimum wage. Thus, the business is not required to make Health Care Expenditures to or on behalf of the owner(s).

**19. Q: Is an employer required to make a minimum Health Care Expenditure for all of its employees?**

**A:** No. Covered Employers are only required to make Health Care Expenditures to or on behalf of those employees who have been employed for at least 90 calendar days and who work at least eight hours per week in San Francisco. In addition, Covered Employers are not required to make Health Care Expenditures for employees exempt from coverage under the Ordinance, as explained in FAQ #23.

**20. Q: What if the number of hours that an employee works in San Francisco changes over the quarter?**

**A:** An employee who *regularly* works eight or more hours per week in San Francisco is covered by the HCSO. For example, an employee who regularly works one eight-hour day per week for the month of January is a covered employee for that month, even if she does not work during the last two months of the quarter.

For employees whose work hours in San Francisco fluctuate below eight hours per week, Covered Employers are only required to make Health Care Expenditures during those quarters in which the employee works an average of eight or more hours per week in San Francisco. For example, an employee who works an irregular schedule ranging from 5 to 11 hours per week during the quarter may be covered if the average of hours worked per week is 8 or more.

For an employee who is terminated before the end of the quarter, calculate the average by dividing the total number of hours worked during that quarter by the number of weeks employed during that quarter.

Note that “hours worked” is relevant to determining whether an employee is covered by this Ordinance, but “hours paid” is the figure used to calculate the minimum expenditure for each Covered Employee, as described in FAQ #s 35-37.

**21. Q: Does the Ordinance cover undocumented employees?**

**A:** Yes. All employees who work in San Francisco – whether or not they are legally authorized to work in the United States – are covered by the law. The OLSE will process an employee’s claim without regard to his or her immigration status; employees filing a claim with the OLSE will not be questioned about their immigration status.

**22. Q: Does the Ordinance require employers to make Health Care Expenditures for independent contractors?**

**A:** No. The Ordinance applies only to employees. However, merely labeling someone an “independent contractor” does not make him or her so. Consistent with California law, whether a person is an employee or an independent contractor is a fact-specific inquiry that is determined by a variety of factors.

For more information on how the State of California reviews issues relating to independent contractor status in wage and hour cases, see:

[http://www.dir.ca.gov/dlse/FAQ\\_IndependentContractor.htm](http://www.dir.ca.gov/dlse/FAQ_IndependentContractor.htm)

**23. Q: Are any employees excluded from coverage or eligibility under the Ordinance?**

**A:** Yes; there are five categories of exempt employees. (1) Covered Employees may waive the right to have their employers make Health Care Expenditures for their benefit, as described in FAQ #24 below. In addition, (2) Managers, supervisors, and confidential employees earning more than \$80,397 annually (or \$38.65 hourly) in 2009, (3) employees who are covered by Medicare or TRICARE/CHAMPUS, (4) 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, or (5) employees who receive health care benefits pursuant to the San Francisco Health Care Accountability Ordinance are not covered by the Ordinance.

With regard to category (2): The annual earnings figure represents an annual base salary, which may or may not include all compensation actually earned. Because the figure is intended to represent an annual base salary, bonuses, commissions, and overtime premiums shall not be included when determining whether this exemption category applies to a specific employee. Thus, an employee who is a manager and earns an annual base salary that is at or above this figure will be considered an exempt employee even if she is not employed for the full year.

With regard to category (3): In order to claim the Medicare exemption, an employer must be able to document that the Social Security Administration (SSA) has determined that the employee is eligible for Medicare. For more information about Medicare, contact the Centers for Medicare & Medicaid Services at 800-633-4227 or visit [www.cms.hhs.gov](http://www.cms.hhs.gov).

With regard to category (4): Nonprofit employees participating in bona fide training programs consistent with Federal Law, which training program will allow that employee to advance into a permanent position, shall be exempt from the definition of Covered Employee. A bona fide training program must be (a) subsidized by public funds from the federal, state, and/or local level, which funds are designated for training, workforce development, job readiness or similar purposes and (b) limited in duration as appropriate to the occupation for which the individual is being trained, taking into account the content of the training, and the prior work experience of the trainee.

A training program shall qualify for this exemption whether or not the program is training the employee to advance into a permanent position for the nonprofit or for another employer, but only where the Employer does not replace, displace or lower the wage or benefits of any existing position or Employee.

For more information regarding these exemption categories, review Regulation 3.2 in the Regulations Implementing the Employer Spending Requirement of the Ordinance, available at <http://www.sfgov.org/olse/hcso>.

### **Employee Voluntary Waiver Form**

#### **24. Q: What is an Employee Voluntary Waiver Form?**

**A:** An Employee Voluntary Waiver Form verifies that an employee is receiving health care through another employer and that s/he knowingly and voluntarily waives the right to have his/her current employer make a Health Care Expenditures for his/her benefit. The Voluntary Waiver Form is available in English, Chinese, and Spanish and may be downloaded from the OLSE website, at <http://www.sfgov.org/olse/hcso>.

The Employee Voluntary Waiver form developed by the OLSE is intended to ensure that the employee understands his/her rights under the Ordinance, so that the waiver is a knowing and voluntary one. Other forms provided by third-party vendors and health insurance carriers that do not reference rights under the Ordinance cannot be used in lieu of the City's Employee Voluntary Waiver form.

#### **25. Q: What makes an Employee Voluntary Waiver Form valid?**

**A:** For an Employee Voluntary Waiver Form to be valid, the employee must fully understand his/her rights under the Ordinance, and the Voluntary Waiver must be voluntarily completed by the employee without pressure or coercion from coworkers, the employer, or anyone connected to the employer.

An employee waiver is effective on the date it is signed and is valid for one year.

Employees have the right to revoke their voluntary waiver at any time; the revocation must be submitted in writing. Employers must maintain documentation of waivers and revocations and provide employees with complete copies of such documentation.

## **Required Health Care Expenditure**

### **26. Q: What is a Health Care Expenditure?**

**A:** A Health Care Expenditure is any 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. Amounts paid by employees shall not count towards the Covered Employer's minimum Health Care Expenditure.

### **27. Q: What are some examples of Health Care Expenditures that meet the requirements of the Ordinance?**

**A:** All of the following examples meet the requirements of the Ordinance:

- (1) Payments to a third party to provide health care services for the Covered Employee, such as paying health insurance premiums for the Covered Employee;
- (2) Payments to the City to fund membership in the Health Access Program/*Healthy San Francisco* or to set up a medical reimbursement account for the Covered Employee's health care expenses;
- (3) Contributions on behalf of the Covered Employee to a health spending account, such as a health reimbursement arrangement, a flexible spending account, or a medical/health savings account;
- (4) Cash reimbursements to the Covered Employee for expenses incurred in the purchase of health care services, such as doctor's and pharmacy bills; and,
- (5) Costs incurred in the direct delivery of health care services for the Covered Employee, such as paying a health care provider directly for services rendered to the Covered Employee.

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

### **28. Q: What qualifies as "health care services"?**

**A:** Health care services means medical 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.

Examples of qualifying expenditures include vision and dental coverage; nonprescription drugs, including, but not limited to, antacids, allergy medicines, pain relievers, and cold medicines; doctor's fees; and necessary hospital services not paid for by insurance. Qualifying medical expenses include dental treatments and fees paid to dentists for x-rays, fillings, braces, extractions, dentures, and the like; eyeglasses and contact lenses needed for medical reasons; and fees for eye examinations and eye

surgery to treat defective vision.

**29. Q: Do I have to choose only one of the options listed above?**

**A:** No, an employer may choose more than one option to satisfy its obligations. An employer may, for example, pay for health coverage of its full-time employees, while paying the City to enroll its part-time employees in the Health Access Program/*Healthy San Francisco*.

**30. Q: What if my employees choose not to participate in the health plan that I offer?**

**A:** A Covered Employer that establishes or maintains a health insurance program that requires contributions by a Covered Employee must do more than offer the Covered Employee an opportunity to participate in such a program. If the employee declines to participate in such a program, the employer must satisfy its Employer Spending Requirement in some other manner.

**31. Q: What should I do if a Covered Employee stops working for me before I've made the quarterly Health Care Expenditure?**

**A:** Covered Employers must comply with the Employer Spending Requirement for all hours paid to a Covered Employee, even if the employment relationship is terminated before the end of the quarter. Covered Employers that have not yet made the quarterly Health Care Expenditure for a Covered Employee may make the expenditure in the same manner as was done in the immediately preceding quarter. Where an employer has chosen to purchase health insurance for its Covered Employees, COBRA payments to continue health insurance coverage shall also qualify as valid health care expenditures. The Covered Employer may also comply by making payments to the City, even if the employer had previously complied with the Employer Spending Requirement in some other manner.

**32. Q: How is the Health Care Expenditure calculated?**

**A:** The minimum Health Care Expenditure for each Covered Employee is calculated by multiplying the total number of "hours paid" to that Covered Employee (including fractions of hours) by the applicable health care expenditure rate. The rate is set forward in the following table:

<b>HCSO Health Care Expenditure Rates</b>				
<b>Business Size (company-wide)</b>		<b>2008</b>	<b>2009</b>	<b>2010</b>
Large (	<b>100+ employees</b>	\$1.76 / hour	\$1.85 / hour	\$1.96 / hour
Medium (	<b>20-99 employees</b>	\$1.17 / hour	\$1.23 / hour	\$1.31 / hour
Small (	<b>1-19 employees</b>	not applicable; exempt from coverage		

*\*Non-profits with fewer than 50 employees are exempt from the Employer Spending Requirement.*

For the definition of "hours paid," see FAQ #s 35-37.

**33. Q: How do I calculate the minimum Health Care Expenditure for a new Covered Employee?**

**A:** For a new Covered Employee, the quarterly minimum Health Care Expenditure is calculated by multiplying the total number of “hours paid” to that employee from the first day of the calendar month following 90 calendar days after his or her first day of work through the end of that quarter.

An employee whose first day of work is January 1, 2008 will become eligible for coverage on April 1, 2008. Thus, the required quarterly minimum Health Care Expenditure is calculated by multiplying all “hours paid” to that employee from April 1<sup>st</sup> through June 30<sup>th</sup> (provided that the employee meets the “hours worked” requirement discussed in FAQ #20).

The minimum Health Care Expenditure for an employee who begins employment on January 15<sup>th</sup>, however, would only include the “hours paid” to that employee from May 1<sup>st</sup> through June 30<sup>th</sup> because May 1<sup>st</sup> is the first day of the calendar month following the employee’s 90<sup>th</sup> calendar day of employment.

**34. Q: Which Health Care Expenditure rate applies to my business?**

**A:** The health care expenditure rate is determined by employer size, which is based on the number of all employees, not just Covered Employees, as explained in FAQ #11. The rate for Large Businesses (100 or more employees) is \$1.85 per hour in 2009. For Medium-Size Businesses with 20-99 employees, the rate is \$1.23 per hour in 2009.

For example, the applicable expenditure rate for an employer with 100 employees, 75 of whom do not work in San Francisco, is \$1.85/hour, even though the employer is only required to make minimum expenditures for 25 employees. However, in the case of an employer who has only 25 employees, all of whom work in San Francisco. This employer would also make expenditures for 25 employees, but at the rate of \$1.23/hour.

In the context of a temporary staffing, leasing, professional employer, or other entity serving the same or similar function, where the client and the agency are joint employers (the employee is considered employed by both the client and the agency), the applicable health care expenditure rate will be determined by the size of the larger employer.

**35. Q: What are “hours paid”?**

**A:** “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, 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 or 516 hours in a single quarter.

Note that “hours paid” is the figure used to calculate the expenditure required for each Covered Employee, but “hours worked” is used to determine whether an employee is covered by this Ordinance, as described in FAQ #s 19-20.

**36. Q: Do hours worked by employees outside of the City count?**

**A:** No. Under the Ordinance, “hours paid” includes only those hours during which the employee is working within the geographic boundaries of the City and County of San Francisco.

For Covered Employees who perform some work outside of San Francisco, “hours paid” that are not hours actually worked (e.g., paid vacation hours, paid time off, and paid sick leave hours) will be calculated on a pro rata basis.

**37. Q: Do “hours paid” include overtime hours? How are “hours paid” calculated for exempt employees?**

**A:** For employees who are not exempt from the overtime provisions of the federal Fair Labor Standards Act (FLSA) and California law, the Health Care Expenditures is calculated based on all hours worked, including overtime hours worked.

Keep in mind, however, that “hours paid” for all employees is capped at 172 hours per month.

For employees who are exempt from the overtime provisions of the FLSA and California law, OLSE will assume that the minimum Health Care Expenditures should be calculated based upon a 40-hour work week, unless there is evidence that the Exempt Employee’s regular work week is less than 40 hours. In instances where there is evidence that the Exempt Employee’s regular work week is less than 40 hours, that figure shall be used in calculating the minimum Health Care Expenditures.

**38. Q: Must minimum Health Care Expenditures be calculated separately for each employee?**

**A:** Yes, subject to certain exceptions described below. The employer must make a minimum Health Care Expenditure to or on behalf of each Covered Employee. Payments to or on behalf of one Covered Employee that exceed the required minimum Health Care Expenditure for that employee will not be considered in determining whether an employer has met its total required minimum Health Care Expenditures for all employees.

See [Regulations 6.2 and 7.2\(B\)](#) and FAQ #s 39-40 for exceptions that apply to self-funded plans and plans providing uniform coverage to Covered Employees.

**39. Q: How does an employer that provides uniform coverage to Covered Employees determine if its expenditures meet or exceed the minimum Health Care Expenditure rate?**

**A:** As set forth in [Regulation 6.2\(B\)\(1\)](#), a Covered Employer that provides uniform coverage to some or all of its Covered Employees will be deemed to comply with the spending requirement of this Ordinance if the average hourly expenditure rate per employee meets or exceeds the expenditure rate required under the Ordinance. (As explained in FAQ #34, the expenditure rate is determined by business size.)

Employers shall calculate the average hourly expenditure rate by (a) dividing the total monthly premium paid for all employees covered by the uniform plan by the total number of employees covered by that plan, then (b) dividing that number by 172 hours paid (“hours paid” per employee is capped at 172 hours in a single month or 516 hours in a single quarter, as explained in FAQ #35).

The employer has the option of including only those employees covered by the Ordinance or including all employees participating in the uniform plan, provided that all such employees receive the same health coverage or product.

Aggregation of expenditures shall be limited to plans with a uniform design, i.e., the plans must have the same benefit design (same co-pay requirements, out-of-pocket maximums, deductibles, coverage tiers, eligibility criteria). Thus, an employer that offers an HMO and a PPO may aggregate expenditures for all of the employees covered by that HMO, but then it must calculate a separate average expenditure for those covered by the PPO. Similarly, an employer that offers two HMO options may not aggregate the expenditures unless the benefit design for both plans is exactly the same. Because amounts paid for dependent coverage do count towards the minimum health care expenditure required under the Ordinance (see Regulation 4.2(D)), differences in contribution levels that correspond with different coverage tiers can be calculated using a weighted average. However, differences in contribution levels based on other criteria, i.e., in situations where the amount an employer spends varies depending on the number of hours worked by employees, the employees' status as union/nonunion, the employees' salary, waiting periods, or work site/location, the expenditures cannot be aggregated.

If the Covered Employer’s expenditure rate fails to meet or exceed the minimum expenditure rate set forth by the Ordinance, that employer must spend the difference (or shortfall) within 30 days of the end of the quarter.

Note that amounts paid by employees shall not count towards the Covered Employer’s minimum Health Care Expenditure.

**40. Q: How does an employer with a self-funded plan determine if its expenditures meet or exceed the required Health Care Expenditure rate?**

**A:** The calculation method set forth in [Regulation 6.2\(B\)\(2\)](#) applies to Covered Employers with self-funded plans. With respect to those employees covered by the self-funded plan, a Covered Employer will be deemed to comply with the spending requirement of this Ordinance if the preceding year's average hourly expenditure rate per employee meets or exceeds the expenditure rate required under the Ordinance. (As explained in FAQ #34, the expenditure rate is determined by business size.)

In addition to the calculation method outlined in Regulation 6.2(B)(2), for both administrative ease and accuracy, employers may calculate the average hourly expenditure rate by (a) dividing the current COBRA equivalent rate (minus any administrative fees) for all employees covered by the self-funded plan by 172 hours paid ("hours paid" per employee is capped at 172 hours in a single month or 516 hours in a single quarter, as explained in FAQ #35).

The employer has the option of including only those employees covered by the Ordinance, or including all employees participating in the self-funded plan, provided that all such employees receive the same health coverage or product.

Aggregation of expenditures shall be limited to plans with a uniform design, i.e., the plans must have the same benefit design (same co-pay requirements, out-of-pocket maximums, deductibles, coverage tiers, eligibility criteria). Thus, an employer that offers an HMO and a PPO may aggregate expenditures for all of the employees covered by that HMO, but then it must calculate a separate average expenditure for those covered by the PPO. Similarly, an employer that offers two HMO options may not aggregate the expenditures unless the benefit design for both plans is exactly the same. Because amounts paid for dependent coverage do count towards the minimum health care expenditure required under the Ordinance (see Regulation 4.2(D)), differences in contribution levels that correspond with different coverage tiers can be calculated using a weighted average. However, differences in contribution levels based on other criteria, i.e., in situations where the amount an employer spends varies depending on the number of hours worked by employees, the employees' status as union/nonunion, the employees' salary, waiting periods, or work site/location, the expenditures cannot be aggregated.

If the Covered Employer's expenditure rate fails to meet or exceed the minimum expenditure rate set forth by the Ordinance, that employer must spend the difference (or shortfall) within 30 days of the end of the quarter.

Note that amounts paid by employees shall not count towards the Covered Employer's minimum Health Care Expenditure.

**41. Q: What if the health insurance premiums that I currently pay for my employee do not reach the minimum amount required by this Ordinance?**

**A:** Employers must make the FULL expenditure required by law; thus, if the monthly premium paid by the employer does not meet the minimum expenditure amount, it must make up the shortfall. It is up to the employer to decide how to make up the shortfall; it may do so by reducing the employees' share of the premiums for the existing plan, choosing a more generous plan with higher premiums, complementing the existing plan with a health spending or medical reimbursement account, making payments to the City (which will then be used to set up a Medical Reimbursement Account for the Covered Employee), or making other expenditures that qualify as health care expenditures within the meaning of the Ordinance.

**42. Q: What if the premiums I pay are greater than the minimum amount required by law?**

**A:** Covered Employers that are spending at or above the required Health Care Expenditure rates have no further spending obligations under the Ordinance.

**43. Q: What if I am already paying my employees health and welfare benefits pursuant to a Prevailing Wage or Public Works Contract, or other Collective Bargaining Agreement?**

**A:** If the health and welfare benefit payments required under your contract are at or above the expenditure rate required under this Ordinance, you will have no further spending obligations under this Ordinance. However, 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 because the employer must ensure that the health care expenditure is spent on health care services for the Covered Employee, as described in FAQ #s 26-28.

Note that any portion of the health and welfare benefit payment that is for life insurance, death benefits, or disability payments shall not count towards the employer's minimum expenditure because such payments do not serve the purpose of providing access to health care.

**44. Q: May I deduct the Health Care Expenditures from my employee's paycheck?**

**A:** No, the minimum Health Care Expenditure must be paid by the employer; thus, a deduction from the employee's earned wages for deposit in the employee's health savings or flexible spending account, for example, shall not satisfy the employer's Employer Spending Requirement. Likewise, an employee's contribution towards his/her health insurance premium shall not be credited towards the employer's minimum Health Care Expenditure.

**45. Q: When does the Health Care Expenditure have to be made?**

**A:** Health Care Expenditures must be made each quarter, within 30 days of the end of the preceding quarter. The first quarter of the year is defined as the period from January 1 through March 31; the second quarter, from April 1 through June 30; the third quarter, from July 1 through September 30; and the fourth quarter, from October 1 through December 31.

**Employer Notice, Recordkeeping, & Reporting Responsibilities**

**46. Q: What is the *Employee Health Care Payment Confirmation*?**

**A:** A Covered Employer that satisfies its obligation to make the required health care expenditures by making payment to the City must provide its Covered Employees with notice, using the Notice provided by the OLSE. The Notice (which is available in English, Chinese, and Spanish) may be downloaded from the OLSE website, at <http://www.sfgov.org/olse/hcso>. [A previous version of this notice was titled *Notice to Employee/Employee City Option Deposit Confirmation*.]

**47. Q: What records do employers need to retain to be in compliance with the Ordinance?**

**A:** Covered Employers must keep, for a period of four years from each Covered Employee's dates of employment, the following records:

- (1) itemized pay statements, as mandated by California Labor Code Section 226, which requires the following: (a) gross wages earned, (b) total hours worked by the employee (unless salaried), (c) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (d) all deductions, aggregated, (e) net wages earned, (f) the inclusive dates of the period for which the employee is paid, (g) the name of the employee and his or her social security number/the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (h) the name and address of the legal entity that is the employer, and (i) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;
- (2) the employee's address, telephone number, date of first day of work; and
- (3) 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,
- (4) documentation supporting the exemption of an employee from coverage, such as a signed Employee Voluntary Waiver Form for each employee for whom the employer is claiming an exemption from the Employer Spending Requirement;
- (5) a copy of the *Employee Health Care Payment Confirmation*.

Covered Employers must also demonstrate that the required Health Care Expenditures were made quarterly, unless they meet the requirements of the exception outlined in [Regulation 6.2\(B\)\(2\)](#) (self-funded plans).

**48. Q: Are there any reporting requirements under this Ordinance?**

**A:** Yes; Covered Employers must report on their Health Care Expenditures on an annual basis, using the Mandatory Annual Reporting Form (ARF).

Employers are strongly encouraged to review the [Annual Reporting Form Overview \(PDF\)](#) and the [Instructions for Annual Reporting Form \(PDF\)](#) (available at <http://www.sfgov.org/olse/hcso>) to ensure compliance with this reporting requirement. Covered Employers who fail to return the completed form by the date stated on the form will be in violation of § 14.3(b) of [Chapter 14 of the SF Administrative Code](#) and shall be subject to penalties and other corrective action.

The form is mailed to employers at the address at which their business is registered. (For more information regarding business registration, please visit [www.sfgov.org/BusinessRegistration](http://www.sfgov.org/BusinessRegistration). To update your mailing address, call Taxpayer Assistance at 415-554-4400.)

The 2008 ARF is also available from our website as a “fillable PDF,” which allows employers to open the document, type in their answers, then print, sign, and return the form by mail. **Employers that download and return the ARF from our website should not complete or return the ARF received by mail.**

Incorporated businesses that are a "controlled group of corporations" for purposes of income tax filing and unincorporated businesses that are “under common control” (as defined in FAQ #16) shall file one Annual Reporting Form and attach blank forms for each of the other businesses covered by that form.

**Retaliation Prohibited**

**49. Q: Is it unlawful to fire someone who refuses to sign an Employee Voluntary Waiver Form, even if that person is already receiving health insurance somewhere else?**

**A:** Yes, 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. One employer’s obligation to make a Health Care Expenditure for its Covered Employee is not affected by any other employer’s obligations; thus, it is illegal for an employer to fire an employee who does not wish to waive his or her right to the mandatory health care expenditure, even if that employee is already receiving health insurance coverage from another employer.

**50. Q: Is it illegal to refuse to hire someone who does not have health insurance?**

**A:** Yes, it is unlawful for any employer to refuse to hire, to fire, or to discriminate against a person based on whether s/he possesses health insurance coverage.

**Filing a Complaint**

**51. Q: How do I report non-compliance to the City?**

**A:** If you suspect that your employer is not complying with the requirements of this Ordinance or have any questions regarding your rights under this Ordinance, call 554-7892, email [HCSO@sfgov.org](mailto:HCSO@sfgov.org), or visit us in Room 430 at City Hall.

**Business Assistance Resources**

**52. Q: Where can employers get business assistance resources to help them comply with City ordinances like this one?**

**A:** The Small Business Commission (SBC) was established to respond to and advocate for the needs of small businesses. The SBC functions as the city's central point of information and referral for small businesses located in the City and County of San Francisco. The Small Business Assistance Center is located in City Hall, Room 110, and may be reached at (415) 554-6134 or [www.sfgov.org/sbc](http://www.sfgov.org/sbc).