



San Francisco Health Care Security Ordinance (SF HCSO) Overview

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Introduction

Employers (including out of state employers) that employ at least one worker within the geographic boundaries of the City and County of San Francisco must comply with San Francisco’s Health Care Security Ordinance (HCSO) if they also:

- Have at least 20 employees nationwide (for for-profit employers); or
- Have at least 50 employees nationwide (for non-profit employers).

For purposes of determining employer size, all employees (“Workers”) performing work for compensation for the employer should be counted (full-time, part-time, seasonal, temporary, contracted, and commissioned). Owners who perform work for compensation should also be counted. “Compensation” includes money, benefits, or in-kind compensation (e.g., room and board, etc.).

HCSO Requirement Summary

Minimum Health Care Expenditure

To comply with the HCSO, employers must make required health care expenditures on behalf of Covered Employees on a quarterly basis at a specific rate.

Annual Reporting

In addition, employers must submit an annual report to the Office of Labor Standards Enforcement (OLSE) by April 30th of each year. The reporting form for 2022 (due April 30, 2023) has not been released yet.

Required Notice

Employers must post a specific HCSO poster in all workplaces with Covered Employees. The notice may be found here: <https://sfgov.org/olse/health-care-security-ordinance-hcso#Forms&Docs>

Record-Keeping

Employers must keep, for a period of four years from each Covered Employee’s dates of employment, sufficient records to document compliance with the HCSO. These record requirements are detailed here: [HCSO Administrative Guidance | San Francisco \(sf.gov\)](#)

Covered Employees

“Covered Employees” are different than “Workers.” Workers are used to determine employer size. Covered Employees are used for the calculation of health care expenditures.

As noted above, employers need to ensure that they are spending a minimum amount per quarter on health care expenses for each Covered Employee. “Covered Employees” include those who have been employed for more than 90 days and who regularly work at least 8 hours per week in San Francisco.

Note that due to an ordinance passed in 2021, employees working remotely outside of San Francisco may need to be counted in the event that the City places a public health restriction in place that encourages telecommuting from a location outside of San Francisco. Regulators plan to release additional guidance on handling employees who telecommute from outside of San Francisco during public health emergencies. For now, only employees working in San Francisco, whether on-site or remotely, need to be counted as Covered Employees.

If an employee is a managerial, supervisory, or confidential employee and earns at least the following annual or hourly rate for the applicable year, they are not considered a Covered Employee:

Year	Annual Salary	Hourly Salary
2021	\$107,991	\$51.92
2022	\$109,643	\$52.71
2023	\$114,141	\$54.88
2024	\$121,372	\$58.35

Note that employers must make the required expenditures even for Covered Employees who waive coverage. However, Covered Employees who already have health care benefits through another employer may voluntarily sign a waiver, and the employer is then not required to make the required minimum Health Care Expenditures for that employee. OLSE’s Employee Voluntary Waiver Form can be found here: <https://sfgov.org/olse/health-care-security-ordinance-hcso#Forms&Docs>

The waiver will not be valid unless the health care benefits are provided either by another employer of the Covered Employee or by the employer of that Covered Employee’s spouse, domestic partner, parent, or guardian. If a Covered Employee has health care benefits that are not provided by another employer (i. e., the employee is purchasing it themselves or receiving MediCal), the employee may not sign a waiver and the employer is still required to make the minimum Health Care Expenditures for that employee.

In addition to the above exceptions, the following will also not be considered Covered Employees:

1. Employees eligible for Medicare or TRICARE (the employer must document eligibility for such programs);
2. Employees employed by a non-profit corporation for up to one year as trainees in a bona fide training program consistent with federal law; and

3. Employees who receive health care benefits pursuant to the San Francisco Health care Accountability Ordinance (HCAO).

Health Care Expenditure Rate

The minimum amount is based on the applicable rate for the year (the “Health Care Expenditure Rate”), which is updated annually. The Health Care Expenditure Rate differs depending on employer size. For 2023 and 2024, the rate is as follows:

Employer Size	Number of Workers	2023 Expenditure Rate	2024 Expenditure Rate
Large	All employers w/ 100+ workers	\$3.40 per hour payable	\$3.51 per hour payable
Medium	Businesses w/ 20-99 workers Nonprofits w/ 50-99 workers	\$2.27 per hour payable	\$2.34 per hour payable
Small	Businesses w/ 0-19 workers Nonprofits w/ 0-49 workers	Exempt	Exempt

Health Care Expenditures are generally defined as amounts actually paid for health care services (e.g., Section 213 medical expenses) for Covered Employees or their spouses or dependents. Employers choose how to make the required Health Care Expenditures for their Covered Employees. Common Health Care Expenditures include:

- Payments for health, dental, and/or vision insurance
- Payments to the SF City Option
- Contributions to programs that reimburse employees for OOP health care costs
 - o Payments for health, dental, and/or vision insurance;
 - o Payments to the San Francisco City Option; or
 - o Contributions to programs that reimburse employees for out-of-pocket health care costs.

An employer may choose more than one option to satisfy its obligations.

There are different rules for calculating the required minimum health care expenditure depending on what type of expenditure the employer makes.

Payments for Fully-Insured Health, Dental and/or Vision Coverage

Employers need to ensure they are making minimum health care expenditures on behalf of Covered Employees on a quarterly basis. They determine whether they meet this threshold by multiplying the total number of Hours Payable¹ to the employee in the quarter by the applicable Health Care Expenditure Rate.

If an employer falls short of the minimum requirement, it must make up the shortfall within 30 days of the end of the quarter. 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 San Francisco City Option (discussed below), or making other expenditures that qualify as Health Care Expenditures according to the HCSO.

Self-Funded Coverage

For self-funded health plans in which the employer pays claims as they are incurred, employers look at the annual spending and make an hourly calculation as follows:

- Total Annual Employer Spending (any employee premium contributions are not counted) / Total Payable Hours = Average Hourly Expenditure Rate.

Employers should assume monthly maximum payable hours of 172, so annual maximum payable hours are:

- 2064 for Full-Time Employees
- 1032 for Part-Time Employees

Any refunds the employer receives, along with any employee contributions, may not be included in the annual spending total.

Employers can do the calculation for all employees in the plan nationwide or just employees covered by SFHCO. Employers may also perform calculation for all employees nationwide enrolled in the plan and assume monthly payable hours of 172 per employee.

Employers should count all claims paid (not claims incurred) for the applicable period. Claims paid for dependents enrolled in the plan may be included if they are paid by the employer.

If an employer falls short of the minimum expenditure rate, it must make "top-off" payments for employees enrolled in those plans. The top-off payment must be made by the end of February following the year in which the expenditure fell short (i.e., by end of February 2024 for any expenditures made in 2023 that fall short of the

¹ "Hours Payable" 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. It also refers to when payment is earned rather than when it is actually paid out to the employee. It includes only those hours during which the employee is working within the geographic boundaries of the City and County of San Francisco.

minimum). It's also important to note that if an employer receives a refund of any kind after it has completed its February calculations, it must do a second round of top-off payments.

Some helpful calculation examples (for both average expenditures and any required top-off payments) are included in this presentation:

https://sfgov.org/olse/sites/default/files/HCSO%202021%20Presentation_Final_Shared.pdf

Providing Uniform Coverage

Employers may provide uniform health coverage (i.e., an HMO or PPO) to their Covered Employees. “Uniform coverage” refers to plans with a uniform design, *i.e.*, the plans must have a uniform benefit design offered to all employees (same co-pay requirements, out-of-pocket maximums, deductibles, coverage tiers, eligibility criteria). In this case, the employer will be deemed to comply with the spending requirement with respect to these employees if the average hourly expenditure rate per employee meets or exceeds the minimum expenditure rate. For this purpose, employers should calculate the average hourly expenditure rate by:

1. Dividing the total monthly premium paid for all employees covered by the uniform plan by the total number of employees covered by the plan; and
2. Dividing that number by 172 hours paid.

Employers may include only Covered Employees in this calculation or may include all employees participating in the uniform plan if all such employees receive the same health coverage or product.

An employer that offers an HMO and a PPO may average hourly expenditures for all of the employees covered by the HMO and must calculate a separate hourly average expenditure for those covered by the PPO. Similarly, an employer that offers two HMO options may not average the expenditures between the two HMOs unless the benefit design for both HMOs is exactly the same.

If the expenditure rate fails to meet or exceed the minimum expenditure rate, the employer must spend the difference (or shortfall) within 30 days of the end of the quarter.

San Francisco City Option

This is an alternative payment option for employers that permits them to contribute to the San Francisco City Option on behalf of their covered employees to meet the spending requirement. Employees who receive these contributions will receive:

1. Enrollment in a San Francisco Medical Reimbursement account (i.e., a health care account with funds that can be used for eligible health care expenses incurred by the employee, spouse/DP, and dependents);
2. Enrollment in a San Francisco Covered Medical Reimbursement Account (i.e., a health care spending account for employees enrolled in a health insurance plan through Covered California); or
3. Free or discounted enrollment into Health San Francisco (i.e., a health care access program for uninsured San Francisco residents).

Upon contributing to the SF City Option, employers must provide their employees with a one-time Employee Health Care Payment Confirmation to notify employees of their employer's contribution.

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