

WS&Co. Compliance Alert

November 2017

New SF HCSO Rules And Rates For 2018

The City of San Francisco has issued new final rules (effective October 29, 2017) and new expenditure rates for 2018 under the Health Care Security Ordinance (HCSO.) As a reminder, the HCSO requires that employers (depending on size and for-profit status) spend a minimum amount on health care for certain employees who regularly work at least 8 hours per week within the City of San Francisco.

New Final Rules

The new final rules clarify and slightly modify the prior rules issued in 2007. The two changes worth mentioning pertain to (1) the new waiver form and (2) changes surrounding the irrevocability of expenditures that apply to self-insured health plans.

New Waiver Form (effective November 1, 2017)

Under the HCSO, employees may **voluntarily** waive the required employer expenditures if certain requirements are met. Below is a brief summary of the key items to note about the waiver provisions:

- The employer must use the exact waiver form provided by the City (no changes are allowed);
- The waiver must be completely voluntary, meaning the employer cannot exert pressure in any way on the employee to sign the waiver;
- The waiver form now requires that an employee certify that he/she is receiving health care services from his/her own employer or through a spouse/partner/parent's employer;

- Once signed and submitted, the waiver has a 1-year expiration date, but employees may revoke the waiver at any time by providing a written request to the employer;
- Employers can now use the electronic version of the waiver form as long as (i) the electronic form is identical to the paper form, (ii) the entire form can be viewed at the same time as the signing (i.e., signature page must be on the same page as the entire form,) and (iii) the website does not state or imply that the employee is required to sign the form.

Issue with Irrevocable Expenditure Requirement for Self-Insured Plans

The final rules state that because expenditures must all be made irrevocably for 2017 (and future years,) amounts that are not actually irrevocably spent cannot be considered in determining if a self-insured plan complies with the HCSO. What this means in plain language is that because a self-insured plan is not actually "spending" the required amount on employees, the COBRA-equivalent rate for a self-insured health care plan may not be used to determine if the HCSO spending requirement has been met. Instead, for self-insured plans, the expenditures must reflect amounts irrevocably paid to third parties (e.g., sending premium payments to a third party administrator.)

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2018 HCSO Rates

The new HCSO Expenditure Rates for 2018 were increased by over 7% compared to the prior year (the largest annual increase since the Ordinance was enacted.) See the rate table below:

HCSO Expenditure Rates	2017	2018
Large Businesses • 100+ employees	\$2.64/hour \$454.08/month	\$2.83/hour \$486.76/month
Medium Business • 20-99 employees • 50-99 employees (for nonprofits)	\$1.76/hour \$302.72/month	\$1.89/hour \$325.08/month
Small Businesses • 1-19 employees • 0-49 employees (for nonprofits)	Exempt	

Note that for non-exempt employees, the minimum expenditures are calculated based on all hours worked, including overtime, but capped at 172 hours per month. For exempt employees, the minimum expenditures are calculated based on a 40-hour work week (unless there is evidence that the exempt employee's regular work week is less than 40 hours,) but always capped at 172 hours per month.

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