CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE, MAYOR

GENERAL SERVICES AGENCY
OFFICE OF LABOR STANDARDS ENFORCEMENT
DONNA LEVITT, MANAGER

September 07, 2012

The Honorable Judge Katherine Feinstein
Presiding Judge
Superior Court of California, County of San Francisco
400 McAllister Street, Room 206
San Francisco, CA 94102

RE: Responses to Civil Grand Jury Report

Dear Judge Feinstein,

I write to provide the Office of Labor Standards Enforcement's responses to the Civil Grand Jury's report entitled "Surcharges and Healthy San Francisco: Healthy for Whom?" I appreciate the Civil Grand Jury's attention to this important matter. My responses are provided in the enclosed chart.

If you have any questions, or require additional information, please do not hesitate to contact me at 415.554.6239 or via email at donna.levitt@sfgov.org.

Sincerely,

Donna Levitt

Donna Levitt
Manager

Enclosure: Office of Labor Standards Enforcement's Responses to Civil Grand Jury Report: "Surcharges and Healthy San Francisco: Healthy for Whom?"

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Office of Labor Standards Enforcement's Responses to Civil Grand Jury Report: "Surcharges and Healthy San Francisco: Healthy for Whom?"

Finding	OLSE Response	Text of OLSE Response
F1. The Jury could not identify any government investigation that reports the number of businesses adding surcharges to pay for HCSO employer mandates and mandated paid sick days.	The Office of Labor Standards Enforcement (OLSE) partially disagrees with the finding.	At the time the Grand Jury report was issued, the City had not reported the number of businesses adding surcharges to pay for Health Care Security Ordinance (HCSO) employer mandates and mandated paid sick days. However, the OLSE had collected Annual Reporting Forms from employers, which required them to self-report 1) whether they imposed a surcharge on customers at any time in 2011 to cover, in whole or in part, the costs of the health care requirement under the HCSO, and 2) the amount collected from any such charges. In August 2011, the OLSE issued an analysis of these Annual Reporting Forms, which is now available at www.sfgov.org/olse/hcso. The 2011 Annual Reporting Form did not require employers to report on surcharges that are imposed to pay for mandated paid sick days and the OLSE has no information on this topic.
F4. The City has neither a plan nor sufficient staff at the OSLE to audit employers' surcharges in compliance with HCSO regulations.	OLSE partially disagrees with the finding.	OLSE requires employers to report the amount of the surcharges collected as well as the health care expenditures made each year on the HCSO Annual Reporting Form. Upon receiving data from the 2012 Annual Reporting Forms, the OLSE will enforce the provisions of Administrative Code Section 14.3(d). It is true that the OLSE does not have sufficient staff or resources to initiate proactive audits of all businesses that impose health care surcharges. The OLSE does, however, plan to audit employers' surcharges in the course of investigating employee complaints about violations of the HCSO. Furthermore, the City's 2012-13 budget provides for an additional staff person to be hired at OLSE to enforce the HCSO.
F5. San Francisco businesses that collected surcharges prior to January 1, 2012 have no obligation to report surcharge receipts to the City nor reconcile the surcharges with health care expenses.	OLSE partially disagrees with the finding.	It is true that the HCSO did not require employers to *reconcile* their health care surcharges collected prior to January 1, 2012 with their health care expenditures. However, employers were required to *report* their health care expenditures and the dollar amount of the health care surcharges they collected in 2011 on their Annual Reporting Forms for 2011. The OLSE collected this data for statistical purposes.

Office of Labor Standards Enforcement's Responses to Civil Grand Jury Report: "Surcharges and Healthy San Francisco: Healthy for Whom?"

Finding	OLSE Response	Text of OLSE Response
F6. Due to the varied wording in describing surcharges on consumers' bills, and the wording of the ordinance, the auditing of surcharges will be difficult.	OLSE partially disagrees with the finding.	The Ordinance regulates surcharges imposed on customers "to cover in whole or in part the costs of the health care expenditure requirement." It will be difficult in some circumstances to determine which, if any, portion of a surcharge is imposed on customers for this specific purpose. However, the OLSE will work to ensure that employers understand this provision of the Ordinance and are in compliance with it.
F8. Employers with HRAs in 2010 allocated $62 million for medical care, reimbursed employees $12 million, and retained up to the remaining $50 million.	OLSE partially disagrees with the finding.	The OLSE's Analysis of the 2010 Annual Reporting Forms provides that employers allocated $62 million to *all* types of health care reimbursement programs—not only HRAs, but also other types of reimbursement programs such as Flexible Spending Accounts (FSAs), Health Saving Accounts (HSAs) and Medical Spending Accounts (MSAs).[1] The $12 million represents the amount that employers reported reimbursing to employees from all of these types of accounts. The Annual Reporting Form did not ask employers to report what happened to the $50 million in unreimbursed funds. These allocations and reimbursements were reported by 2,960 employers who submitted 2010 Annual Reporting Forms to the OLSE.
F10. Significant numbers of restaurants utilizing HRAs in 2010 paid out no medical expenses for their employees.	OLSE partially disagrees with the finding.	A total of 184 employers reported on their Annual Report Forms that they did not reimburse any of the funds they allocated to HRAs or other reimbursement accounts in 2010. The OLSE did not require employers to report their industry sector. Therefore, OLSE has no data specific to restaurants that utilized HRAs or other reimbursement programs in 2010.

[1] See IRS Publication 969 for more information about types of health care reimbursement accounts: http://www.irs.gov/pub/irs-pdf/p969.pdf.