

[Labor and Employment Code - Health Care Expenditure Requirements for Certain Employers at the Airport]

1 **Ordinance amending the Labor and Employment Code to revise the Healthy Airport**
2 **Ordinance to require, beginning on January 1, 2027~~6~~, that Contracting Parties**
3 **employing certain airport workers make Irrevocable Health Care Expenditures on**
4 **behalf of their employees at tiered rates reflecting the employee's household size.**

5 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
6 **Additions to Codes** are in *single-underline italics Times New Roman font*.
7 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
8 **Board amendment additions** are in double-underlined Arial font.
9 **Board amendment deletions** are in ~~strikethrough Arial font~~.
10 **Asterisks (* * * *)** indicate the omission of unchanged Code
11 subsections or parts of tables.

12 Be it ordained by the People of the City and County of San Francisco:

13 Section 1. Findings and Purpose.

14 (a) In 2020, the City enacted the Healthy Airport Ordinance (Ordinance No. 235-20),
15 which amended the Health Care Accountability Ordinance, now codified as Article 121 of the
16 Labor and Employment Code. The Healthy Airport Ordinance requires employers of workers
17 at San Francisco International Airport ("Airport") who hold safety- or security-sensitive
18 positions to either (1) offer full-family health insurance benefits in plans meeting specified
19 requirements or (2) pay a set rate to the City to fund Medical Reimbursement Accounts for
20 their Covered Employees.

21 (b) Since the Healthy Airport Ordinance became law, thousands of San Francisco
22 Airport Service Employees have gained or improved their ability to provide for the health care
23 needs of their families. The Healthy Airport Ordinance has thereby helped attract and retain
24 high-quality employees whose work impacts safety and security, improved Airport safety and
25

1 security for travelers and the public by promoting a healthier workforce, and minimized the
2 potential for contagion to spread from the Airport (a major worldwide transportation hub) to
3 other environs.

4 (c) The purpose of this ordinance is to preserve the improvements to Airport safety
5 and security obtained through the Healthy Airport Ordinance, while providing Covered
6 Employers of San Francisco Airport Service Employees expanded flexibility to determine how
7 best to provide health care expenditures to their employees. Instead of choosing between
8 providing specific types of health plans or contributing to Medical Reimbursement Accounts,
9 under this ordinance Contracting Parties employing San Francisco Airport Service Employees
10 will have full discretion in determining how to meet minimum health expenditure requirements
11 for their employees.

12
13 Section 2. Article 121 of Division II of the Labor and Employment Code is hereby
14 amended by revising Sections 121.2, 121.3, and 121.10, to read as follows:

15
16 **SEC. 121.2. DEFINITIONS.**

17 As used in this Article 121, the following capitalized terms shall have the meanings
18 set forth in this Section 121.2:

19 * * * *

20 “Employee” shall mean any person who is employed by a Contracting Party, including
21 part-time and temporary employees.

22 “Health Care Dependent” shall mean: (1) a San Francisco Airport Service Employee’s spouse
23 or registered domestic partner, (2) a San Francisco Airport Service Employee’s child, which shall
24 include any legally adopted child, recognized natural child, stepchild, foster child, and minor legal
25 ward who is eligible for coverage in accordance with 42 U.S.C. § 300gg-14(a), as may be amended

1 from time to time; and (3) any other dependent entitled to be covered under employer-provided full-
2 family health care plans under federal law or the laws of the State of California.

3 “Health Care Expenditure” shall mean an amount paid by a Contracting Party to a trustee or
4 third party on behalf of a San Francisco Airport Service Employee for the purpose of providing or
5 reimbursing the cost of Health Care Services for San Francisco Airport Service Employees and their
6 Health Care Dependents. “Health Care Expenditure” also shall mean an amount paid by a
7 Contracting Party to a San Francisco Airport Service Employee for the purpose of reimbursing the cost
8 of Health Care Services for San Francisco Airport Service Employees and their Health Care
9 Dependents. “Health Care Expenditure” also shall mean an amount paid by a Contracting Party to the
10 City on behalf of a San Francisco Airport Service Employee to establish or to contribute to a Medical
11 Reimbursement Account administered in accordance with Section 21.2(g) of Article 21 of the Labor
12 and Employment Code. Where a Contracting Party offers a self-funded or self-insured insurance
13 health plan to San Francisco Airport Service Employee, “Health Care Expenditures” may
14 include: premiums and/or fees paid by the Contracting Party to a third party to administer the
15 self-funded/self-insured plan; claims paid out-of-pocket by the Contracting Party for the
16 specific worker; and the actuarial value of the benefits offered by the Contracting Party as
17 determined for setting rates for COBRA under federal law. “Health Care Expenditure” shall not
18 include, for example: (1) any amount otherwise required to be paid by Federal, State, or local law, (2)
19 any amount funded by deductions from a San Francisco Airport Service Employee’s pay, or (3) any
20 amount paid directly by a Contracting Party to a San Francisco Airport Service Employee that is not
21 related to a documented expenditure for Health Care Services.

22 “Health Care Services” shall mean medical care, services, or goods that may qualify as tax
23 deductible medical care expenses under Section 213 of the Internal Revenue Code as may be amended
24 from time to time, or medical care, services, or goods having substantially the same purpose or effect
25 as such deductible expenses.

1 “Health Director” shall mean the Director of the Department of Public Health.

2 “Irrevocable Health Care Expenditure” or “Irrevocable Expenditure” shall mean any amount
3 of Health Care Expenditure that has not been retained by and cannot at any time be recovered by or
4 returned to the Contracting Party. Where a Contracting Party offers a self-funded or self-insured
5 insurance health plan to San Francisco Airport Service Employee, the actuarial value of the
6 benefit offered may be treated as an Irrevocable Expenditure.

7 * * * *

8 **SEC. 121.3. HEALTH CARE ACCOUNTABILITY COMPONENTS.**

9 (a) Except as provided in subsections (d) and (e), with respect to each Covered
10 Employee who either resides in San Francisco (regardless of where the Covered Employee
11 provides services) or provides services covered by this Article 121 in San Francisco, each
12 Contracting Party shall do one of the following, at the Contracting Party’s option:

13 (1) Offer to the Covered Employee health plan benefits that meet minimum
14 standards prepared by the Health Director and approved by the Health Commission. The
15 minimum standards shall provide for a maximum period for each Covered Employee’s health
16 benefits to become effective, no later than the first of the month that begins after 30 days from
17 the start of employment on a covered Contract, Subcontract, Lease, or Sublease. The Health
18 Commission shall review such standards at least once every two years to ensure that the
19 standards stay current with State and Federal regulations and existing health benefits
20 practices; or

21 (2) For each Week in which the Covered Employee works the applicable minimum
22 number of hours set forth in Section 121.2 (definition of “Covered Employee”), pay to the City
23 \$2.80 per hour for each hour the Covered Employee is employed by the Contracting Party on
24 the Contract or Subcontract or on property covered by a Lease, but not to exceed \$112 in any
25 Week. The City shall appropriate money received pursuant to this subsection (a)(2) for the

1 use of the Department of Public Health. The Department of Public Health shall use the monies
2 appropriated for staffing and other resources to provide medical care for the uninsured.
3 Beginning with ~~f~~Fiscal ~~y~~Year 2009-2010, and each following year, the Health Director shall
4 propose adjustments to the hourly rate and weekly maximum fee provided in this Ssubsection
5 (a)(2), based on changes since the prior year in the Bureau of Labor Statistics Consumer
6 Price Index for Medical Care in the San Francisco Bay Area or average Health Maintenance
7 Organization (HMO) premiums in California. The Health Director shall submit the proposed
8 adjustments to the Controller by March 1. The Controller shall make appropriate adjustments
9 to the hourly rate and weekly maximum fee without further action by the Board of Supervisors.
10 The adjusted hourly rate and weekly maximum fee shall take effect on July 1.

11 (3) Participate in a health benefits program developed by the Health Director in
12 consultation with the Agency. The Health Director shall obtain Health Commission approval of
13 the program before implementing it. The Health Director shall seek such approval within ~~twelve~~
14 {12} months after this Article 121 is finally approved. Prior to implementation of the health
15 benefits program provided in this Ssubsection (a)(3), each Contracting Party shall comply with
16 Ssubsection (a)(1) or (a)(2). After the Health Director implements the program, in addition to
17 the options provided in Ssubsections (a)(1) and (a)(2), Contracting Parties may satisfy their
18 obligations under this Article by complying with the requirements of the health benefits
19 program. In developing the program, the Health Director shall: (i) attempt to make health
20 coverage available for uninsured Covered Employees and, if feasible, any other person
21 employed by a Contracting Party who works less than 20 hours per week on a City contract,
22 or other uninsured City residents; (ii) use public health facilities to the maximum extent
23 practicable; (iii) make the program economically viable; and (iv) provide a mechanism for
24 funding which relies, as much as possible, on contributions by participating employers and
25 employees.

1 (b) Except as provided in subsections (d) and (e), with respect to each Covered
2 Employee who does not reside in San Francisco, but who provides services covered by this
3 Article 121 at the San Francisco Airport or at the San Bruno Jail, each Contracting Party shall
4 do one of the options set forth in subsection (a), at the Contracting Party's option.

5 (c) With respect to each Covered Employee who does not reside in San Francisco,
6 and does not provide services covered by this Article 121 in San Francisco, at the San
7 Francisco Airport, or at the San Bruno Jail, each Contracting Party shall do one of the
8 following, at the Contracting Party's option:

9 (1) Offer to the Covered Employee health plan benefits that meet minimum
10 standards prepared by the Health Director and approved by the Health Commission pursuant
11 to ~~§~~subsection ~~121.3~~(a)(1) above; or

12 (2) For each Week in which the Covered Employee works the applicable minimum
13 number of hours set forth in Section 121.2 (definition of "Covered Employee"), pay to the
14 Covered Employee an additional \$2.80 per hour for each hour the Covered Employee is
15 employed by the Contracting Party on the Contract or Subcontract or on property covered by
16 a Lease, but not to exceed \$112 in any Week, to enable the employee to obtain health
17 insurance coverage. This represents the City's ~~current~~original estimate of the average cost of
18 obtaining individual health insurance benefits. Beginning with ~~f~~Fiscal ~~y~~Year 2009-2010, and
19 each following year, the Health Director shall propose adjustments to the hourly rate and
20 weekly maximum fee provided in this ~~§~~subsection ~~121.3~~(c)(2), based on changes since the
21 prior year in the Bureau of Labor Statistics Consumer Price Index for Medical Care in the San
22 Francisco Bay Area or average Health Maintenance Organization (HMO) premiums in
23 California. The Health Director shall submit the proposed adjustments to the Controller by
24 March 1. The Controller shall make appropriate adjustments to the hourly rate and weekly
25

1 maximum fee without further action by the Board of Supervisors. The adjusted hourly rate and
2 weekly maximum fee shall take effect on July 1.

3 (d) Until January 1, 2027~~6~~, ~~W~~with respect to each Covered Employee who is a San
4 Francisco Airport Service Employee, each Contracting Party shall comply with this Article 121
5 by providing health care benefits, making contributions to medical reimbursement accounts, or making
6 Irrevocable Health Care Expenditures, as set forth in subsections (d)(1)-(d)(3), ~~do one of the following,~~
7 at the Contracting Party's option~~;~~ As stated in subsection (e), starting on January 1, 2027~~6~~, only the
8 option of making Irrevocable Health Care Expenditures, as set forth in subsection (d)(3), will constitute
9 compliance with this Article 121 by a Contracting Party with respect to each Covered Employee who is
10 a San Francisco Airport Service Employee.

11 (1) **Health Care Benefits.** Offer health plan benefits to the Covered Employee and
12 the Covered Employee's dependents, with the following features:

13 (A) The health benefits shall include at least one plan that: (i) is offered at no
14 cost to the Covered Employee, (ii) provides a level of coverage that is designed to provide
15 benefits that are actuarially equivalent to at least 90% of the full actuarial value of the benefits
16 provided under the plan, and (iii) provides coverage for all services described in the California
17 Essential Health Benefit Benchmark Plan.

18 (B) A Contracting Party may offer additional health benefit plans, provided that
19 each such health benefit plan offered shall provide a level of coverage that is designed to
20 provide benefits that are actuarially equivalent to at least 80% of the full actuarial value of the
21 benefits provided under the plan and to provide coverage for all services as described in the
22 California Essential Health Benefit Benchmark Plan. If the premium costs of such additional
23 health benefit plan are greater than the premium costs of a plan offered under subsection
24 (d)(1)(A), a Covered Employee electing such a health benefit plan may be required to pay a
25 portion of the premium costs. The Covered Employee's premium cost share shall be limited to

1 not more than the difference between the premium costs of the most expensive plan offered
2 under subsection (d)(1)(A) and the premium costs of the health benefit plan that the Covered
3 Employee elects under this subsection (d)(1)(B).

4 (C) The maximum period for each Covered Employee's health benefits to
5 become effective shall be no later than the first day of the first month after 30 days from the
6 start of employment as a San Francisco Airport Service Employee; provided, however, that if
7 a Contracting Party elects to make monthly contributions for a Covered Employee pursuant to
8 subsection (d)(2), health benefits shall become effective no later than the first day after the
9 Contracting Party ceases making such contributions.

10 (D) The Covered Employee's health benefits shall, at a minimum, cover the
11 Covered Employee, the Covered Employee's spouse or registered domestic partner, and the
12 Covered Employee's child, which shall include any legally adopted child, recognized natural
13 child, stepchild, foster child, and minor legal ward. Coverage for a child must be made
14 available until the child reaches the age of 26, in accordance with 42 U.S.C. § 300gg-14(a), as
15 may be amended from time to time.

16 (E) Notwithstanding the Operative Date of Ordinance No. 235-20, if a
17 Contracting Party elects to comply with this Subsection 121.3(d) by providing health benefits
18 under subsection (d)(1), such health benefits shall not be required to be in effect prior to April
19 1, 2021.

20 (2) **Contributions to a Medical Reimbursement Account.** For each Week in which the
21 Covered Employee works any hours as a San Francisco Airport Service Employee, make
22 contributions for that Employee as specified below into an account established under Section
23 21.2 of the Labor and Employment Code, as may be amended from time to time.

1 (A) Contributions made pursuant to this subsection (d)(2) shall be \$9.50 per
2 hour, but not to exceed \$380 in any Week, as of the operative date of Ordinance No. 235-20~~the~~
3 ~~ordinance in Board File No. 201133, establishing this subsection.~~

4 (B) Beginning with ~~f~~Fiscal ~~y~~Year 2022-2023, and for each following fiscal year,
5 the ~~Director of~~ Health Director shall propose adjustments to the hourly rate and weekly
6 maximum fee provided in this subsection (d)(2), based on changes since the prior year in the
7 Bureau of Labor Statistics Consumer Price Index for Medical Care in the San Francisco Bay
8 Area or in average Health Maintenance Organization premiums in California. The Health
9 Director shall submit the proposed adjustments, together with proposed adjustments under
10 ~~S~~subsection ~~121.3~~(a)(2), to the Controller by March 1. The Controller shall make appropriate
11 adjustments to the hourly rate and weekly maximum fee without further action by the Board of
12 Supervisors. The adjusted hourly rate and weekly maximum fee shall take effect on July 1.

13 (3) Irrevocable Health Care Expenditures. Make Irrevocable Health Care Expenditures
14 to or on behalf of each San Francisco Airport Service Employee.

15 (A) For purposes of this subsection (d)(3), the minimum Irrevocable Health Care
16 Expenditure rate is as follows:

17 (i) Before January 1, 2027~~6~~:

18 a. For a San Francisco Airport Service Employee with no Health Care
19 Dependents, \$6.17 per hour worked, but not to exceed \$246.80 in any Week;

20 b. For a San Francisco Airport Service Employee with one Health Care
21 Dependent, \$12.33 per hour worked, but not to exceed \$493.20 in any Week;

22 c. For a San Francisco Airport Service Employee with two or more
23 Health Care Dependents, \$17.44 per hour worked, but not to exceed \$697.60 in any Week.

24 (ii) Each calendar year, the Health Director shall propose adjustments to the
25 hourly rate and weekly maximum Irrevocable Health Care Expenditure rate provided in this subsection

1 (d)(3)(A) for the next calendar year based on changes since the prior year in the Bureau of Labor
2 Statistics Consumer Price Index for Medical Care in the San Francisco Bay Area or in average Health
3 Maintenance Organization premiums in California. The Health Director shall submit the proposed
4 adjustments for the next calendar year, together with proposed adjustments under Section 121.3(a)(2),
5 to the Controller by June 1 of the year before the proposed change is to go into effect. The Controller
6 shall make appropriate adjustments to the hourly rate and weekly maximum fee without further action
7 by the Board of Supervisors. The adjusted hourly rate and weekly maximum Irrevocable Health Care
8 Expenditure rate shall take effect on the following January 1 each year.

9 (B) Where a Contracting Party complies with this subsection (d)(3) in full or in part by
10 making payments to the City to provide for a Medical Reimbursement Account, the payment to the City
11 shall be due no later than 30 days after the end of the quarter of the year in which the hours were
12 worked by the San Francisco Airport Service Employee.

13 (e) Beginning on January 1, 2027~~6~~, Contracting Parties employing San Francisco Airport
14 Service Employees shall no longer have the option of complying with this Article 121 by providing
15 benefits or making contributions, as set forth in subsections (d)(1)-(d)(2), and shall comply with this
16 Article 121 only by making Irrevocable Health Care Expenditures, as set forth in subsection (d)(3).

17 (ef) A Covered Employee may voluntarily waive an offer of health plan benefits
18 under this Section 121.3 using a waiver form approved by the Agency upon providing the
19 Contracting Party proof of current health plan coverage. With respect to subsection (d)~~of this~~
20 ~~Section 121.3~~, such proof of current health plan coverage must include the Covered
21 Employee's Health Care Dependents~~dependent~~. The Contracting Party must retain voluntary
22 waiver forms and proof of health plan coverage for three years and must provide the Agency
23 access to them upon request. Where a Contracting Party is subject to the requirements in
24 subsection (d)(3) of this Section 121.3 and secures a voluntary waiver from a San Francisco Airport
25 Service Employee with respect to health plan coverage offered to the Contracting Party's similarly-

1 situated San Francisco Airport Service Employees, it may deduct the amount of the premiums that the
2 employer would have paid if the San Francisco Airport Service Employee accepted the coverage
3 offered from the applicable minimum Irrevocable Health Care Expenditure rate. The Contracting Party
4 remains responsible to make Irrevocable Health Care Expenditures for the remaining amounts that are
5 not covered by the waiver.

6 (fg) When preparing proposed budgets and requests for supplemental
7 appropriations for contract services, City departments that regularly enter into agreements for
8 the provision of services by nonprofit corporations shall transmit with their proposal a written
9 confirmation that the department has considered in its calculation the costs that the nonprofit
10 corporations calculate that they will incur in complying with the Health Care Accountability
11 Ordinance.

12 (gh) Notwithstanding the above subsections in this section 121.3, if, at the time a
13 Contract, Subcontract, Lease, or Sublease is executed, the Contracting Party has 20 or fewer
14 employees (or, in the case of a Nonprofit Corporation, 50 or fewer employees), including any
15 employees the Contracting Party plans to hire to implement the Contract, Subcontract, Lease,
16 or Sublease, the Contracting Party shall not be obligated to provide the Health Care
17 Accountability Components set forth in ~~this Ssubsections~~ 121.3(a), 121.3(b), or 121.3(c) to its
18 Covered Employees. In determining the number of employees had by a Contracting Party, all
19 employees of all entities that own or control the Contracting Party and that the Contracting
20 Party owns or controls, shall be included.

22 **SEC. 121.10. WAIVER THROUGH COLLECTIVE BARGAINING.**

23 ~~Except for the requirements provided in subsection 121.3(d), a~~ All or any portion of the
24 applicable requirements of this Article 121 may be waived in a bona fide collective bargaining
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1 agreement, provided that such waiver is explicitly set forth in such agreement in clear and
2 unambiguous terms.

3 * * * *

4
5 Section 3. Effective Date; Operative Date.

6 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
7 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
8 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
9 Mayor's veto of the ordinance.

10 (b) This ordinance shall become operative 60 days after its effective date.

11
12 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word
13 of this ordinance, or any application thereof to any person or circumstance, is held to be
14 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
15 shall not affect the validity of the remaining portions or applications of the ordinance. The
16 Board of Supervisors hereby declares that it would have passed this ordinance and each and
17 every section, subsection, sentence, clause, phrase, and word not declared invalid or
18 unconstitutional without regard to whether any other portion of this ordinance or application
19 thereof would be subsequently declared invalid or unconstitutional.

20
21 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
22 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
23 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
24 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
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1 additions, and Board amendment deletions in accordance with the “Note” that appears under
2 the official title of the ordinance.

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5 APPROVED AS TO FORM:
6 DAVID CHIU, City Attorney

7 By: /s/ Ian H. Eliasoph
8 IAN H. ELIASOPH
9 Deputy City Attorney

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