

1 [Worker Health Care Security Ordinance]

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3 **Ordinance amending the San Francisco Administrative Code by adding Sections 14.1**
4 **through 14.12 ~~14.11~~, to require that employers operating within San Francisco make**
5 **health expenditures on behalf of employees, set penalties and provide for enforcement,**
6 **and creating a health security task force to analyze among other related issues, the**
7 **desirability and feasibility of imposing a fee on employers to provide health care for**
8 **employees.**

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Note: Additions are *single-underline italics Times New Roman*;
10 deletions are *strikethrough italics Times New Roman*.
Board amendment additions are double underlined.
11 Board amendment deletions are ~~strikethrough normal~~.

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

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14 Section 1. **Declaration of legislative findings and intent.** In San Francisco,
15 responsible employers have long provided employer-paid health care for their employees.
16 But in recent years, these employers have faced mounting competitive pressure from other
17 employers who do not follow the industry standard of providing health care. Employers in San
18 Francisco who do not provide health care are engaging in unfair competition and causing
19 economic injury to the majority of responsible employers who continue to provide such care.

20 The City has a vital interest in preventing a "race to the bottom" where, in an effort to
21 remain competitive, employers abandon their longstanding commitment to providing
22 employer-paid health care, forcing their employees to seek uncompensated care from the
23 City's already overburdened taxpayer-funded public health care system. Reducing the
24 economic pressure for employers to eliminate employer-paid health care is important for
25 minimizing the burden on taxpayers and the public health care system, protecting the health,

1 safety and well-being of hardworking San Franciscans and promoting safe conditions and
2 stable economic growth.

3 Further, research shows that improving access to employer-paid health care can
4 strengthen industries by significantly reducing employee turnover and improving employers'
5 ability to recruit and retain employees. To ensure that the cost of providing health care to
6 employees is not shifted to the taxpayers and the public health care system, and to promote
7 safe conditions and a more stable and reliable workforce for all employers, the City must
8 reduce the competitive pressure to eliminate employer-provided health care. The City can
9 reduce these pressures and level the playing field for responsible employers by requiring that
10 employers make health care expenditures on behalf of their employees.

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12 Section 2. The San Francisco Administrative Code is hereby amended by adding
13 Sections 14.1 through 14.11, to read as follows:

14 **SEC. 14.1 SHORT TITLE; DEFINITIONS.**

15 *(a) Short title. This Chapter shall be known and may be cited as the "Worker Health Care*
16 *Security Ordinance."*

17 *(b) Definitions. For purposes of this Chapter, the following terms shall have the following*
18 *meanings:*

19 *(1) "Administering agency" or "Agency" means the City's Office of Labor Standards (OLS).*

20 *(2) "City" means the City and County of San Francisco.*

21 *(3) "Covered employer" means any employer operating within the City that is required to*
22 *obtain a valid San Francisco business license from the San Francisco Tax Collector's office, where*
23 *such employer employs a minimum total of twenty (20) covered employees at any one time during the*
24 *preceding fiscal year, or in the case of a Nonprofit corporation, a minimum of fifty (50) covered*
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1 employees . ~~Covered employers shall not include those employers subject to the Health Care~~
2 ~~Accountability Ordinance, Chapter 12Q of the San Francisco Administrative Code, and such~~
3 ~~employers are exempted from the requirements of this Chapter. Covered employers shall not~~
4 ~~include those employers participating in a health benefits program developed by the Health~~
5 ~~Director in consultation with the Agency where such program makes available essential health~~
6 ~~care for uninsured workers and, if feasible, other uninsured City residents, and uses public~~
7 ~~health facilities to the maximum extent practicable. After the Health Director implements the~~
8 ~~program, covered employers may satisfy their obligations under this Chapter by complying~~
9 ~~with the requirements of the health benefits program.~~

10 (4) "Employee" or "covered employee" means any person who works in the City for a covered
11 employer on a full-time or part-time basis where such employee works at least eighty (80) hours
12 monthly for a minimum of six (6) months per annual reporting period, provided, however, that the term
13 "employee" shall not include persons who are managerial, supervisory, or confidential employees,
14 unless such employees earn annually under \$72,450 or in 2007 and for subsequent years, the figure as
15 set by the administering agency and shall not include those persons who are eligible to receive
16 benefits under Medicare or the Civilian Health and Medical Program Uniformed Services
17 (CHAMPUS). Covered employees under this Chapter shall also not include those persons
18 who are "covered employees" as defined in Section 12Q.2.9 of the Health Care Accountability
19 Ordinance, Chapter 12Q of the San Francisco Administrative Code, if the employer meets the
20 requirements set forth in Section 12Q.3 for those employees.

21 (5) "Entity" or "Person" means any natural person, corporation, sole proprietorship,
22 partnership, association, joint venture, limited liability company or other legal entity.

23 (6) "Health Care Expenditure" means any amount paid by a covered employer to its covered
24 employees or to another party on behalf of its covered employees for the purpose of providing health
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1 care services for covered employees or reimbursing the cost of such services for its employees,
2 including, but not limited to, (a) contributions by such employer on behalf of its covered
3 employees to a health savings account as defined under section 223 of the United States Internal
4 Revenue Code or to any other account having substantially the same purpose or effect without
5 regard to whether such contributions qualify for a tax deduction or are excludable from
6 employee income, on behalf of any of its covered employees, or (b) or (b) reimbursement by
7 such employer to its covered employees for incurred health care expenses. Notwithstanding any other
8 provision of this subsection, such term shall not include any payment made directly or indirectly for
9 workers' compensation or Medicare benefits.

10 (7) "Health Care Services" means medical care, services or goods including, but not limited to,
11 (i) inpatient and outpatient hospital services, (ii) physicians' surgical and medical services, (iii)
12 laboratory, diagnostic and x-ray services, (iv) prescription drug coverage, (v) annual physical
13 examinations, (vi) preventative services, (vii) mental health services, (viii) dental services, (ix) vision
14 care services, (x) durable medical equipment, and (xi) substance abuse treatment services; provided,
15 however, that such term shall not include any medical procedure or treatment which is solely cosmetic.

16 (8) "Prevailing Health Care Expenditure Rate" means the amount of health care
17 expenditure that a covered employer shall be required to make for each hour worked by its
18 covered employees each year. The health care expenditure rate shall be determined based
19 on made on behalf of a full-time employee equal to the "average contribution" for a full-time
20 employee approved by the Board of Supervisors pursuant to Section A8.425 of the San Francisco
21 Charter and based on the annual ten county survey amount for the applicable fiscal year, and paid by
22 the City through its Health Service System on behalf of members, with such average contribution rate
23 to be prorated on an hourly basis by dividing the monthly average contribution by one hundred
24 seventy two (172) (the number of hours worked in a month by a full-time employee). The
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1 "health care expenditure rate" shall be seventy-five percent (75%) of the preceding hourly
2 average contribution, except that for covered employers that are small businesses, the "health
3 care expenditure rate" shall be fifty percent (50%) of the preceding hourly average
4 contribution.

5 (9) "Required Health Care Expenditure" means the total health care expenditure that a covered
6 employer is required to make each year for all its covered employees pursuant to Section 14.2.

7 (10) "Small Business" means a covered employer that employed no more than one
8 hundred (100) covered employees at any one time during the preceding year.

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10 **SEC. 14.2. REQUIRED HEALTH CARE EXPENDITURES.**

11 (a) **Required Expenditures.** Covered employers shall make required health care expenditures
12 on behalf of their covered employees each year. Each covered employer shall determine its required
13 health care expenditure by multiplying the applicable health care expenditure rate by the total number
14 of hours worked that year by all the covered employees as defined in Section 14.1(d)(b)(4), of such
15 employer.

16 (b) **Additional Employer Responsibilities.** A covered employer shall: (i) maintain accurate
17 records of health care expenditures and required health care expenditures, and proof of such
18 expenditures each year; provided, however, that covered employers shall not be required to maintain
19 such records in any particular form; and (ii) provide a report to the administering agency on an annual
20 basis containing such other information as the administering agency shall require. Such report shall
21 be made available to the public without employee names and addresses.

22 (c) **Collective Bargaining Agreements.** A covered employer that is a signatory to a collective
23 bargaining agreement under which such employer makes the required health care expenditures on
24 behalf of its employees as determined by the Agency, may fully comply with the requirements of this
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1 section by filing annually with the Agency proof of such collective bargaining agreement and its terms,
2 in a format specified by the Agency, and shall otherwise be exempt from all other provisions of this
3 section.

4 **SEC. 14.3. REDUCTION OF EMPLOYEE HOURS OR WORK SCHEDULE**

5 **a) Reduction of hours or modification of work schedule.** An employer shall not
6 reduce or modify any employee's schedule, or revise the ratio of the employer's full-time to
7 part-time employees for the purpose of evading the obligations created by this
8 Article, and such prohibited actions include but are not limited to the following:

9 (1) Reducing an employee's schedule from more than 20 hours per week to less
10 than 20 hours per week unless the employee requested such a change in schedule without
11 any suggestion, invitation or coercion from the employer, or the business of the employer
12 required such a revision.

13 (2) Replacing a terminated employee working more than 20 hours per week with
14 two or more employees working a similar number of hours, but less than 20 hours unless the
15 employer could not find one employee to replace the terminated employee.

16 **(b) Reduction in number of covered employees.** In any circumstance where an
17 employer reduces the number of covered employees as defined under Section 14.1(4), below
18 the number that would have resulted in the employer being considered a "covered employer"
19 under Section 14.1(3), and that employer would have been covered but for the reduction in
20 number of covered employees, the employer shall demonstrate that such reduction of covered
21 employees was not done for the purpose of evading the obligations of this Article.

22 **SEC. 14.4 14.3- PENALTIES; ENFORCEMENT.**

23 **(a) Penalties.** The Agency may impose administrative penalties upon employers who violate
24 this Chapter, in the amount of up to one-and-one-half times the total expenditures that the employer

1 failed to make; or in its discretion, the Agency may require the employer to pay the medical bills of a
2 covered employee, with the amount paid not to exceed that employee's proportionate share of the
3 employer's required health expenditure for the period during which the bill was incurred.

4 (b) **Notice of Violation.** Upon determining that a covered employer may have violated the
5 terms of this Chapter, the Agency shall send written notice to the covered employer of the possible
6 violation and of the employer's right to respond to the Agency's initial determination by submitting
7 pertinent documents and other information. If after providing the covered employer with a reasonable
8 opportunity to respond to the allegations, the Agency makes a final determination that a violation has
9 occurred, the Agency shall provide written notice to the covered employer setting forth:

10 (1) The basis for the final determination;

11 (2) The corrective action that the covered employer must take to come into compliance with the
12 requirements of this Chapter, including any penalties that the employer owes to the City under
13 subsection (a), which amounts shall also include simple annual interest of up to 10% from the date
14 payment should have been made;

15 (3) That the covered employer has the right to appeal the Agency's final determination to the
16 Controller, but that any such appeal must be filed in writing with the Controller within 15 days of the
17 date of receipt of the determination; and

18 (4) That the Covered employer's failure to file an appeal in writing with the Controller within
19 15 days shall cause the Agency's determination to be deemed a final administrative decision by the City
20 upon expiration of the 15-day period, which the City may enforce in a court of law; that the covered
21 employer will be required to take corrective action within 14 days of the Agency's decision becoming
22 final; and that a covered employer must file an appeal with the Controller in order to exhaust
23 administrative remedies.

24 (c) **Appeals.**
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1 (1) Within 15 days of receiving an appeal from the Agency's final determination, the Controller
2 shall appoint a hearing officer and shall so advise the Agency and the covered employer, and/or their
3 respective counsel or authorized representative.

4 (2) The hearing officer shall promptly set a date for a hearing. The hearing must commence
5 within 45 days of the notification of the appointment of the hearing officer and conclude within 75 days
6 of such notification unless all parties agree to an extended period.

7 (3) The Agency shall have the burden of producing evidence that the covered employer has
8 violated the requirements of this Chapter and the burden of proving the violation.

9 (4) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written
10 decision affirming, modifying, or vacating the Agency's determination. If the hearing officer vacates
11 the Agency's determination in its entirety, that decision shall also vacate any assessment of
12 penalties, damages. If the hearing officer affirms the Agency's determination, the hearing officer
13 shall issue a decision upholding the Agency's determination, including the amount of the penalties
14 assessed by the Agency. With respect to penalties, the hearing officer's jurisdiction to modify the
15 Agency's assessment is limited and the following procedures apply. If the hearing officer modifies the
16 Agency's determination, the hearing officer shall transmit the decision to the Agency, which shall
17 within 5 business days modify the assessment of penalties consistent with the hearing officer's decision
18 based on the criteria set forth in this Section and transmit the modified assessment to the hearing
19 officer. Upon receiving the modified assessment from the Agency, the hearing officer shall within 3
20 business days issue a final decision which shall include the amount of the penalty assessment as
21 modified by the Agency.

22 (5) The hearing officer's decision shall consist of findings and a determination, which shall be
23 final. The covered employer may seek review of the hearing officer's decision only by filing in the San
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1 Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure,
2 section 1094.5, as may be amended from time to time.

3 (6) The failure of the Controller or hearing officer to comply with the time requirements of this
4 Section shall not cause the Controller or the hearing officer to lose jurisdiction over an appeal from the
5 Agency's determination filed under this Section.

6 (d) **Corrective Action by the Employer.** Upon the hearing officer's affirming or modifying the
7 Agency's determination, the covered employer is required to take the corrective action, including the
8 payment of penalties ,if any, within 14 days of receiving the hearing officer's decision. When a covered
9 employer fails to take corrective action within the time required by the provisions of this Section, the
10 City may immediately pursue all available remedies against the covered employer.

11 (e) **Selection of Hearing Officers.** The Agency may establish qualifications for persons
12 selected by the Controller to serve as a hearing officer under this Section, including a requirement that
13 the hearing officer have experience with the implementation of wage and hour labor laws.

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15 **SEC. 14.5 44.4. UNLAWFUL RETALIATION.**

16 It shall be unlawful for any covered employer to deprive or threaten to deprive any person of
17 employment, take or threaten to take any reprisal or retaliatory action against any person, or directly
18 or indirectly intimidate, threaten, coerce, command or influence or attempt to intimidate, threaten,
19 coerce, command or influence any person because such person has cooperated or otherwise
20 participated in an action to enforce, inquire about, or inform others about the requirements of this
21 Chapter.

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23 **SEC. 14.6 44.5. RULES.**

1 The Agency may promulgate rules in accordance with this Chapter and such other rules as may
2 be necessary for the purpose of implementing, construing and carrying out the provisions of this
3 section.

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5 **SEC. 14.7. 14.6. IMPACT ON PUBLIC HEALTH SERVICES.**

6 (a) If participation in any new or existing City-sponsored or –operated health benefits
7 plan or similar program is determined to satisfy an employer's obligations under this
8 ordinance, the Controller shall, by October 1 of each year, report to the Board of Supervisors
9 on whether City implementation of such program has resulted in a reduction of services
10 provided by the Department of Public Health.

11 (b) If the Controller reports that there has been a reduction of services, the Board
12 shall, within 30 days of receiving the report, hold a hearing on whether to amend the ordinance
13 to preclude employers from using the City program to satisfy their obligations.

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15 **SEC. 14.8 14.7. TASK FORCE ON HEALTH CARE SECURITY FEE.**

16 (a) **Creation.** Pursuant to this section, a Task Force will be appointed to evaluate the
17 desirability and necessity of imposing a fee on employers to further the provision of health care for the
18 under and uninsured worker population.

19 (b) **Members.** The Task Force shall be a seven member body with all members appointed by
20 the Board of Supervisors and such appointments must be made within sixty (60) days of the effective
21 date of this Ordinance.

22 (c) **Duties.** The duties of the Task Force shall include the following:
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1 (1) Review the feasibility of charging employers a fee for health care for employees after first
2 directing that a study be conducted on the nexus between the burden on the City's safety net health
3 system and use of such system by uninsured workers covered by this measure.

4 (2) Evaluate creating a fee to fund enforcement of the Worker Health Care Security Ordinance.

5 (3) Report on the relationship between uncompensated care provided for workers by non-profit
6 hospitals and the absence of employer-compensated health care.

7 (4) Analyze whether an employer paid fee for health care studied in 14.6(c)(1.) could be pooled
8 for each worker to increase their access to health care.

9 (5) Investigate the ability of small employers in the City with under twenty (20) employees to
10 pay for health care for their employees.

11 (6) Develop policy recommendations for possible tax benefits in the form of write-offs for the
12 employers making the required health care expenditures.

13 (7) Receive a report from the Director of the Department of Health within six months
14 from the creation of the task force on various recommended alternative means by which an
15 employer may satisfy the requirements set forth in Section 14.1(b)(6), including but not limited
16 to possible opportunities for employer sponsored charitable contributions towards
17 organizations that provide for healthcare for San Franciscans.

18 (d) Reporting. The Task Force shall report to the Board of Supervisors its recommendations
19 within nine months of appointment of all members.

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21 **SEC. 14.9 14.8. SEVERABILITY.**

22 If any section, subsection, clause, phrase or portion of this Chapter is for any reason held
23 invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such
24 portion shall be deemed a separate, distinct and independent provision and such holding shall not
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1 affect the validity of the remaining portions thereof. To this end, the provisions of this ordinance shall
2 be deemed severable.

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4 **SEC. 14.10 9. PREEMPTION.**

5 Nothing in these sections shall be interpreted or applied so as to create any power, duty or
6 obligation in conflict with, or preempted by, any federal or state law.

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8 **SEC. 14.11 10. GENERAL WELFARE.**

9 In adopting this Chapter, the City and County of San Francisco is assuming an undertaking
10 only to promote the general welfare. It is not assuming, nor is it imposing on its officers and
11 employees, an obligation for breach of which it is liable in money damages to any person who claims
12 that such breach proximately caused injury.

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14 **SEC. 14.12 11. EFFECTIVE DATE.**

15 This Chapter shall become effective ninety (90) days after it is adopted. This Chapter is
16 intended to have prospective effect only.

17 APPROVED AS TO FORM:
18 DENNIS J. HERRERA, City Attorney

19 By: _____
20 ALEETA M. VAN RUNKLE
21 Deputy City Attorney