

1 [Administrative Code - Health Care Security Ordinance]

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3 **Ordinance amending the San Francisco Administrative Code by amending Sections**
4 **14.1, 14.3 and 14.4 of the Health Care Security Ordinance to provide that only amounts**
5 **actually paid or irrevocably committed to pay for providing employee health care**
6 **services shall satisfy the employer expenditure requirements of the Ordinance, add an**
7 **employee notification requirement, and to modify penalty provisions.**

8 NOTE: Additions are *single-underline italics Times New Roman*;
9 deletions are ~~*strike-through italics Times New Roman*~~.
10 Board amendment additions are double-underlined;
Board amendment deletions are ~~strike-through normal~~.

11 Section 1. The San Francisco Administrative Code is hereby amended by amending
12 Sections 14.1, 14.3 and 14.4, to read as follows:

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

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

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

18 (1) "City" means the City and County of San Francisco.

19 (2) "Covered employee" means any person who works in the City where such
20 person qualifies as an employee entitled to payment of a minimum wage from an employer
21 under the Minimum Wage Ordinance as provided under Chapter 12R of the San Francisco
22 Administrative Code and has performed work for compensation for his or her employer for
23 ninety (90) days, provided, however, that:

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1 (A) ~~(a)~~ From the effective date of this Chapter through December 31,
2 2007, "at least twelve (12) hours" shall be substituted for "at least two (2) hours" where such
3 term appears in Section 12R.3(a);

4 (B) ~~(b)~~ From January 1, 2008 through December 31, 2008, "at least ten
5 (10) hours" shall be substituted for "at least two (2) hours" where such term appears in
6 Section 12R.3(a);

7 (C) ~~(c)~~ Beginning January 1, 2009, "at least eight (8) hours" shall be
8 substituted for "at least two (2) hours" where such term appears in Section 12R.3(a);

9 (D) ~~(d)~~ The term "employee" shall not include persons who are
10 managerial, supervisory, or confidential employees, unless such employees earn annually
11 under \$72,450.00 or in 2007 and for subsequent years, the figure as set by the administering
12 agency;

13 (E) ~~(e)~~ The term "employee" shall not include those persons who are
14 eligible to receive benefits under Medicare or TRICARE/CHAMPUS;

15 (F) ~~(f)~~ The term "covered employees" shall not include those persons
16 who are "covered employees" as defined in Section 12Q.2.9 of the Health Care Accountability
17 Ordinance, Chapter 12Q of the San Francisco Administrative Code, if the employer meets the
18 requirements set forth in Section 12Q.3 for those employees; and

19 (G) ~~(g)~~ The term "covered employees" shall not include those persons
20 who are employed by a nonprofit corporation for up to one year as trainees in a bona fide
21 training program consistent with Federal law, which training program enables the trainee to
22 advance into a permanent position, provided that the trainee does not replace, displace, or
23 lower the wage or benefits of any existing position or employee.

24 (H) ~~(h)~~ Nor shall "covered employees" include those persons whose
25 employers verify that they are receiving health care services through another employer, either

1 as an employee or by virtue of being the spouse, domestic partner, or child of another person;
2 provided that the employer obtains from those persons a voluntary written waiver of the health
3 care expenditure requirements of this Chapter and that such waiver is revocable by those
4 persons at any time.

5 (3) "Covered employer" means any medium-sized or large business as defined
6 below engaging in business within the City that is required to obtain a valid San Francisco
7 business registration certificate from the San Francisco Tax Collector's office or, in the case of
8 a nonprofit corporation, an employer for which an average of fifty (50) or more persons per
9 week perform work for compensation during a quarter. Small businesses are not "covered
10 employers" and are exempt from the health care spending requirements under Section 14.3

11 (4) "Employer" means an employing unit as defined in Section 135 of the
12 California Unemployment Insurance Code or any person defined in Section 18 of the
13 California Labor Code. "Employer" shall include all members of a "controlled group of
14 corporations" as defined in Section 1563(a) of the United States Internal Revenue Code, and
15 the determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of
16 the Internal Revenue Code.

17 (5) "Health Access Program" means a San Francisco Department of Public
18 Health program to provide health care for uninsured San Francisco residents.

19 (6) "Health Access Program participant" means any uninsured San Francisco
20 resident, regardless of employment or immigration status or pre-existing condition, who is
21 enrolled by his or her employer or who enrolls as an individual in the Health Access Program
22 under the terms established by the Department of Public Health.

23 (7) Subject to the limitations set forth in Section 14.3(a), "health ~~"Health~~ care
24 expenditure" means any amount paid by a covered employer to its covered employees or to a
25 third party on behalf of its covered employees for the purpose of providing health care

1 services for covered employees or reimbursing the cost of such services for its covered
2 employees, including, but not limited to (a) contributions by such employer on behalf of its
3 covered employees to a health savings account as defined under section 223 of the United
4 States Internal Revenue Code or to any other account having substantially the same purpose
5 or effect without regard to whether such contributions qualify for a tax deduction or are
6 excludable from employee income; (b) reimbursement by such covered employer to its
7 covered employees for expenses incurred in the purchase of health care services; (c)
8 payments by a covered employer to a third party for the purpose of providing health care
9 services for covered employees; (d) costs incurred by a covered employer in the direct
10 delivery of health care services to its covered employees; and (e) payments by a covered
11 employer to the City to be used on behalf of covered employees. The City may use these
12 payments to: (i) fund membership in the Health Access Program for uninsured San Francisco
13 residents; and (ii) establish and maintain reimbursement accounts for covered employees,
14 whether or not those covered employees are San Francisco residents. Notwithstanding any
15 other provision of this subsection, "health care expenditure" shall not include any payment
16 made directly or indirectly for workers' compensation or Medicare benefits.

17 (8) "Health care expenditure rate" means the amount of health care expenditure
18 that a covered employer shall be required to make for each hour paid for each of its covered
19 employees each quarter. The "health care expenditure rate" shall be computed as follows:

20 (A) ~~(a)~~ From the effective date of this Chapter through June 30, 2007,
21 \$1.60 per hour for large businesses and \$1.06 per hour for medium-sized businesses;

22 (B) ~~(b)~~ From July 1, 2007 through December 31, 2007, January 1, 2008
23 through December 31, 2008, and January 1, 2009 through December 31, 2009, the rates for
24 large and medium-sized businesses shall increase five (5) percent over the expenditure rate
25 calculated for the preceding year;

1 ~~(C)~~ ~~(e)~~ From January 1, 2010 and each year thereafter, the "health care
2 expenditure rate" shall be determined annually based on the "average contribution" for a full-
3 time employee to the City Health Service System pursuant to Section A8.423 of the San
4 Francisco Charter based on the annual ten county survey amount for the applicable fiscal
5 year, with such average contribution prorated on an hourly basis by dividing the monthly
6 average contribution by one hundred seventy-two (172) (the number of hours worked in a
7 month by a full-time employee). The "health care expenditure rate" shall be seventy-five
8 percent (75%) of the annual ten county survey amount for the applicable fiscal year for large
9 businesses and fifty percent (50%) for medium-sized businesses.

10 (9) "Health care services" means medical care, services, or goods that may
11 qualify as tax deductible medical care expenses under Section 213 of the Internal Revenue
12 Code, or medical care, services, or goods having substantially the same purpose or effect as
13 such deductible expenses.

14 (10) "Hour paid" or "hours paid" means a work hour or work hours for which a
15 person is paid wages or is entitled to be paid wages for work performed within the City,
16 including paid vacation hours and paid sick leave hours, but not exceeding 172 hours in a
17 single month. For salaried persons, "hours paid" shall be calculated based on a 40-hour work
18 week for a full-time employee.

19 (11) "Large business" means an employer for which an average of one hundred
20 (100) or more persons per week perform work for compensation during a quarter.

21 (12) "Medium-sized business" means an employer for which an average of
22 between twenty (20) and ninety-nine (99) persons per week perform work for compensation
23 during a quarter.

24 (13) "Person" means any natural person, corporation, sole proprietorship,
25 partnership, association, joint venture, limited liability company, or other legal entity.

1 (14) "Required health care expenditure" means the total health care
2 expenditure that a covered employer is required to make every quarter for all its covered
3 employees.

4 (15) "Small business" means an employer for which an average of fewer than
5 twenty (20) persons per week perform work for compensation during a quarter.

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7 **SEC. 14.3. REQUIRED HEALTH CARE EXPENDITURES.**

8 (a) **Required Expenditures.**

9 (1) Covered employers shall make required health care expenditures to or on
10 behalf of their covered employees each quarter. The required health care expenditure for a
11 covered employer shall be calculated by multiplying the total number of hours paid for each of
12 its covered employees during the quarter (including only hours starting on the first day of the
13 calendar month following ninety (90) calendar days after a covered employee's date of hire)
14 by the applicable health care expenditure rate. In determining whether a covered employer
15 has made its required health care expenditures, payments to or on behalf of a covered
16 employee shall not be considered if they exceed the following amount: the number of hours
17 paid for the covered employee during the quarter multiplied by the applicable health care
18 expenditure rate. The City's Office of Labor Standards Enforcement (OLSE) shall enforce the
19 health expenditure requirements under this Section.

20 (2) "Health care expenditure" shall only include an amount irrevocably paid by a
21 covered employer to a covered employee or to a third party on behalf of a covered employee. An
22 amount that is retained by the employer or that may be recovered by or returned to the employer shall
23 not constitute a valid "health care expenditure." An amount paid to a third party for the purpose of
24 reimbursing a covered employee for expenses incurred in the purchase of health care services shall not
25 constitute a valid "health care expenditure" unless any unused funds carry over from quarter to

1 quarter and from year to year and remain available to the covered employee or to a surviving spouse,
2 registered domestic partner, or dependent, for reimbursement of future health care expenses.

3 (b) **Employer Notice to Employees.** Each covered employer shall provide its covered
4 employees with a written notice of the employer's obligation under this Chapter to make health care
5 expenditures and how the employer is meeting this obligation. The City shall develop and promulgate
6 rules regarding the content and timing of the required notice.

7 (c) ~~(b)~~ **Additional Employer Responsibilities.** A covered employer shall: (i) maintain
8 accurate records of health care expenditures, required health care expenditures, and proof of
9 such expenditures made each quarter each year, and allow OLSE reasonable access to such
10 records, provided, however, that covered employers shall not be required to maintain such
11 records in any particular form; and (ii) provide information to the OLSE, or the OLSE's
12 designee, on an annual basis containing such other information as OLSE shall require, but
13 OLSE may not require an employer to provide information in violation of State or federal
14 privacy laws. Where an employer does not maintain or retain adequate records documenting
15 the health expenditures made, or does not allow OLSE reasonable access to such records, it
16 shall be presumed that the employer did not make the required health expenditures for the
17 quarter for which records are lacking, absent clear and convincing evidence otherwise. The
18 Office of Treasurer and Tax Collector shall have the authority to provide any and all
19 nonfinancial information to OLSE necessary to fulfill the OLSE's responsibilities as the
20 enforcing agency under this Ordinance. With regard to all such information provided by the
21 Office of Treasurer and Tax Collector, OLSE shall be subject to the confidentiality provisions
22 of Subsection (a) of Section 6.22-1 of the San Francisco Business and Tax Regulations Code.

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1 **SEC. 14.4. ADMINISTRATION AND ENFORCEMENT.**

2 (a) The City shall develop and promulgate rules to govern the operation of this
3 Chapter. The regulations shall include specific rules by the Department of Public Health on
4 the operation of both the Health Access Program and the reimbursement accounts identified
5 in Section 14.2(g), including but not limited to eligibility for enrollment in the Health Access
6 Program and establishment of reimbursement accounts and rules by the OLSE for
7 enforcement of the obligations of the employers under this Chapter. The rules shall also
8 establish procedures for covered employers to maintain accurate records of health care
9 expenditures and required health care expenditures and provide a report to the City without
10 requiring any disclosures of information that would violate State or Federal privacy laws. The
11 rules shall further establish procedures for providing employers notice that they may have
12 violated this Chapter, a right to respond to the notice, a procedure for notification of the final
13 determination of a violation, and an appeal procedure before a hearing officer appointed by
14 the City Controller. The sole means of review of the hearing officer's decision shall be by filing
15 in the San Francisco Superior Court a petition for a writ of mandate under Section 1094.5 of
16 the California Code of Civil Procedure. No rules shall be adopted finally until after a public
17 hearing.

18 (b) During implementation of this Chapter and on an ongoing basis thereafter, the City
19 shall maintain an education and advice program to assist employers with meeting the
20 requirements of this Chapter.

21 (c) Any employer that reduces the number of employees below the number that would
22 have resulted in the employer being considered a "covered employer," or below the number
23 that would have resulted in the employer being considered a medium-sized or large business,
24 shall demonstrate that such reduction was not done for the purpose of evading the obligations
25 of this Chapter or shall be in violation of the Chapter.

1 (d) It shall be unlawful for any employer or covered employer to deprive or threaten to
2 deprive any person of employment, take or threaten to take any reprisal or retaliatory action
3 against any person, or directly or indirectly intimidate, threaten, coerce, command or influence
4 or attempt to intimidate, threaten, coerce, command or influence any person because such
5 person has cooperated or otherwise participated in an action to enforce, inquire about, or
6 inform others about the requirements of this Chapter. Taking adverse action against a person
7 within ninety (90) days of the person's exercise of rights protected under this Chapter shall
8 raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

9 (e) (1) The City shall enforce the obligations of ~~employers and~~ covered employers
10 under this Chapter, and ~~shall may~~ impose administrative penalties upon ~~employers and~~ covered
11 employers who fail to make required health care expenditures on behalf of their employees
12 within five days of the quarterly due date. The amount of the penalty shall be equal to up to one-
13 and one-half times the total expenditures that a covered employer failed to make plus simple
14 annual interest of up to ten (10) percent from the date payment should have been made, but in any
15 event the total penalty for this violation shall not exceed ~~\$100 \$1,000.00~~ for each employee for
16 each ~~quarter week~~ that the required such expenditures ~~were are~~ not made within five days of the
17 quarterly due date. The \$100 penalty shall increase by an amount corresponding to the prior year's
18 increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San
19 Francisco-Oakland-San Jose, CA metropolitan statistical area.

20 (2) For other violations of this Chapter by employers and covered employers,
21 the administrative penalties shall be as follows: For refusing to allow access to records,
22 pursuant to Section 14.3(b), \$25.00 as to each worker whose records are in issue for each
23 day that the violation occurs; for the failure to maintain or retain accurate and adequate
24 records pursuant to Section 14.3(b) and for the failure to make the annual report of
25 information required by OLSE pursuant to Section 14.3(b). \$500.00; for violation of Section

1 14.4(d) (retaliation), \$100.00 as to each person who is the target of the prohibited action for
2 each day that the violation occurs; and for any other violation not specified in this subsection
3 (e)(2), \$25.00 per day for each day that the violation occurs.

4 (3) The City Attorney may bring a civil action to recover civil penalties for the
5 violations set forth in subsections (e)(1) and (e)(2) in the same amounts set forth in those
6 subsections, and to recover the City's enforcement costs, including attorneys' fees.

7 (4) Amounts recovered under this Section shall be deposited in the City's
8 General Fund.

9 (f) The City Controller shall coordinate with the Department of Public Health and OLSE
10 to prepare periodic reports on the implementation of this Chapter including participant rates,
11 any effect on services provided by the Department of Public Health, the cost of providing
12 services to the Health Access Program participants and the economic impact of the Chapter's
13 provisions. Reports shall be provided to the Board of Supervisors on a quarterly basis for
14 quarters beginning July 1, 2007 through June 30, 2008, then every six months through June
15 30, 2010. Reports shall include specific information on any significant event affecting the
16 implementation of this Chapter and also include recommendations for improvement where
17 needed, in which case the Board of Supervisors or a committee thereof shall hold a hearing
18 within thirty (30) days of receiving the report to consider responsive action.

19 (g) The Director of Public Health shall convene an advisory Health Access Working
20 Group to provide the Department of Public Health and the Health Access Program with expert
21 consultation and direction, with input on members from the Mayor and the Board of
22 Supervisors. The Health Access Working Group shall be advisory in nature and may provide
23 the Health Access Program with input on matters including: setting membership rates;
24 designing the range of benefits and health care services for participants; and researching
25 utilization, actuaries, and costs.

1 (h) The Department of Public Health and the OLSE shall report to the Board of
2 Supervisors by July 1, 2007, on the development of rules for the Health Access Program and
3 for the enforcement and administration of the employer obligations under this Chapter. The
4 Board of Supervisors or a committee thereof shall hold a hearing on the proposed rules to
5 ensure that participants in the Health Access Program shall have access to high quality and
6 culturally competent services.

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9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

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13 By: _____
14 THOMAS J. OWEN
15 Deputy City Attorney
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