

LEGISLATIVE DIGEST

(Second Amendment of the Whole, dated 11/15/2011)

[Administrative Code – Health Care Security Ordinance]

Ordinance amending the San Francisco Administrative Code by amending Sections 14.1, 14.3 and 14.4, and by adding Section 14.1.5, to: 1) clarify that only expenditures reasonably calculated to benefit the employee shall satisfy the employer expenditure requirements of the Health Care Security Ordinance; 2) require that contributions to a health reimbursement account remain available to the employee for two years, rather than one year; 3) condition use of a health reimbursement account in 2012 upon carry-over of any balance in the account at the end of 2011; 4) provide, in the alternative if triggered by court action, that only amounts actually paid to provide employee health care services shall satisfy the employer expenditure requirements of the Health Care Security Ordinance; 5) require employers imposing surcharges on customers to use the full amount collected under the surcharge for employee health care expenditures pay for the required expenditures to report certain information to OLSE in connection with the surcharge; 6) add an employee notification requirement; 7) modify penalty provisions; and 8) set an operative date.

Existing Law

The City's Health Care Security Ordinance ("the HCSO" or "the Ordinance"), codified as Chapter 14 of the San Francisco Administrative Code, requires, among other things, that certain employers make "health care expenditures" on behalf of certain of their employees.

The City may impose a number of sanctions on employers who fail to make the required expenditures, including administrative fines. The fines may reach up to one-and-one-half times the amount of the missed expenditures, plus 10 percent interest, not to exceed \$1,000 per week for each employee.

Amendments to Current Law

The proposal would amend the Health Care Security Ordinance to clarify that a "health care expenditure" only includes an expenditure that is "reasonably calculated to benefit the employee." If an expenditure is set up so that the money may at some point be returned to the employer, the expenditure would only satisfy the requirements of the Ordinance if the

money remained available to the employee for reimbursement of health care expenses for at least two years from the date of the expenditure. An employer could recover any unused funds left in the account 90 days after an employee separated from employment, if the employer provided the employee with a written notice of the balance in the account no later than 3 days after the employee's separation.

Under the proposal, if an employer covered by the Ordinance successfully sued to prevent enforcement of the new provisions regarding what constitutes a "health care expenditure" discussed above, a different rule would apply. In that case, a "health care expenditure" would only include an amount that (1) was actually paid by an employer to an employee or to a third party on behalf of the employee, and (2) could not be returned to the employer. Unused amounts in the employee's reimbursement account would have to carry over from quarter to quarter and from year to year and remain available to the employee, even after the employee changed jobs. An employer could recover unused amounts paid out for the purpose of reimbursing future health care services if (1) the employee no longer worked for the employer and had not made a claim for reimbursement from the funds for 18 months; or, (2) the employee had died.

If an employer wished to continue using an existing health reimbursement account in 2012 to satisfy its obligation to make health care expenditures, the employer would have to roll over any unused funds left in the account at the end of 2011 to 2012.

The proposal would add a requirement that employers provide their employees with a written explanation, prepared by OLSE, of what an employee's rights are under the Health Care Security Ordinance and what an employer's duties are. If the employer used health reimbursement accounts to satisfy its obligations under the Ordinance, the proposal would also require the employer to report to OLSE the terms of those accounts, including what costs were eligible for reimbursement. The proposal would also require the employer to provide a quarterly written summary to employees if the employer made payments to a reimbursement account to satisfy the requirements of the Ordinance.

Under the proposal, an employer who imposed a surcharge on its customers to pay for the health care expenditures required under the Ordinance would be required to report to OLSE each year on how much money the employer collected from the surcharge and on how much money the employer spent on employee health care. If the amount collected from the surcharge was more than the amount spent on employee health care, the proposal would require the employer to irrevocably pay or designate that difference for employee health care expenditures.

Finally, the proposal would revise the amount of administrative fines that the City may impose for failure to make health care expenditures required under the Ordinance. The proposal would retain the provision that City may impose fines in an amount up to one-and-one-half times the amount of the missed expenditures, but would reduce the cap to \$100 per quarter (rather than \$1,000 per week) for each employee. The proposal would also eliminate

the interest on the penalty amount. The proposal would reduce the maximum penalty for failure to maintain records or to make annual reports from \$500 per week to \$500 per quarter. Other remedies and corrective actions available to enforce the Ordinance, including restitution to employees, would remain unchanged.

The proposal would become operative on January 1, 2012.

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The amendment of the whole, dated 11/15/2011, consolidates and re-states various provisions from the legislation on file, dated 11/1/2011, that relate to contributions to health reimbursement accounts, but do not significantly change those provisions.

The 11/15/2011 amendment of the whole would reduce the cap on administrative fines for failure to make mandated expenditures, from \$1,000 per week to \$100 per quarter, for each employee. The 11/15/2011 amendment of the whole would also reduce the maximum penalty for failure to maintain records or to make annual reports from \$500 per week to \$500 per quarter.