



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

October 4, 2011

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

Re: File No. 110998 [Administrative Code- Health Care Security Ordinance]

Small Business Commission Recommendation: Do not recommend approval. Should the BOS be inclined to pass this ordinance however, the SBC recommends that the ordinance be amended to include provisions that direct the controller to track the number of jobs and wages lost, broken down between business sectors and businesses of 20-49, 50-99, and 100+ employees and file a report to the Board of Supervisors and Small Business Commission at 6 and 12 months, and annually thereafter.

Dear Ms. Calvillo:

On October 3, 2011, the Small Business Commission (SBC) voted unanimously to recommend that the Board of Supervisors not approve BOS File No. 110998. Should the BOS be inclined to pass this ordinance however, the SBC recommends that the ordinance be amended to include provisions that direct the controller to track the number of jobs and wages lost, broken down between business sectors and businesses of 20-49, 50-99, and 100+ employees and file a report to the Board of Supervisors and Small Business Commission at 6 and 12 months, and annually thereafter.

The Small Business Commission recognizes that there is a loophole in the Health Care Security Ordinance that needs to be addressed. The Commission however is not able to support the approach sponsored by Supervisor David Campos. The SBC however, thanks Supervisor Campos for bringing this important matter to the forefront and looks forward to be engaged in finding a solution that benefits workers while not significantly damaging the already fragile economic situation that San Francisco businesses face.

According to OLSE, the total reimbursement account expenditures are \$62 million per year. Of this, \$50 million is currently not being utilized by employees. It has not been quantified what percentage of this \$50 million is being retained by the employee or returned to the employer. Spread out among less than 800 employers, the economic impact could be upwards of \$60,000 per employer. According to the legislative sponsor, the impact to small employers averages approximately \$38,000 per year. This will directly translate to lost jobs. The economic impact to larger employers, which is higher on a per business basis will also translate to lost jobs and affect all aspects of the San Francisco economy. This economic impact needs to be considered as there will be a reduction of money being cycled back into the economy.

As a cash set aside versus accrual accounting, hundreds of millions of dollars may be withheld from the economy over several years. The Commission finds that an accrual method is a more appropriate direction and encourages the Board of Supervisors to support this approach. An accrual based policy versus cash set aside provides equal access to employees, while allowing businesses maintain their delicate cash flow needs. Supervisor Campos's proposed amendment to his original legislation, while it provides a method to return funds to employers, will still tie up hundreds of millions of dollars of unused funds over time in cash accounts that serve no benefit to the economy.



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Additional notes from our response to BOS File No. 110546, the previous version of this ordinance include:

- The SBC finds that requiring notification of reimbursement account benefits provided under the HCSO is a very important right that workers should be entitled to. The Commission determined that the increased notice will lead to additional utilization of the reimbursement accounts, without leading to an immediate \$50 million impact on the economy. The San Francisco Health Plan, in administering Healthy San Francisco reimbursement accounts has demonstrated that increased notice and outreach has led to improved utilization of these accounts. The Commission thanks Supervisor Campos for recognizing this need and for incorporating it into his ordinance.
- The SBC does not support employers that are intentionally structuring their HRA accounts to limit their use. However, the Commission has determined that this is not an appropriate approach to address this issue, which may only affect a small minority of employers. The Commission recommends that as a policy direction, that the Board of Supervisors gives OLSE the tools to better collect data to show how pervasive the practice of denying or withholding benefits to employees.
- Although available data shows that only 7% of health care expenditures are spent on reimbursement accounts, figures also show that 29% of employers use reimbursement plans as a full or partial means of complying with the HCSO. Additionally, according to the Office of Labor Standards and Enforcement (OLSE), up to half of the businesses in certain low profit margin sectors, including the restaurant and hospitality industries, may feel the economic consequences of this ordinance.
- Of the 29% of businesses that use reimbursement accounts, a majority of these businesses use reimbursement plans to supplement a primary expenditure, most cases likely being a health insurance plan. Reimbursement accounts are a reasonable option to fulfill the remainder of the mandate. Additionally, businesses that provide health insurance to full time workers, or employees working over a certain hour threshold, may choose to provide their very part time employees with reimbursement accounts. A health reimbursement account is often the most equitable way to provide the mandate, both for the employee and the employer.

The Commission thanks Supervisor Campos and his legislative aide Hillary Ronen for their presentations at the Small Business Commission.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

cc. Members of the Board of Supervisors
Jason Elliott, Mayor's Office
Donna Levitt, Office of Labor Standards Enforcement