

LEGISLATIVE DIGEST

(Amendment of the Whole, dated 10/04/2011)

[Administrative Code – Health Care Security Ordinance]

Ordinance amending Sections 14.1, 14.3 and 14.4 of the San Francisco Administrative Code, to: 1) clarify that only amounts actually paid to provide employee health care services shall satisfy the employer expenditure requirements of the Health Care Security Ordinance; 2) add an employee notification requirement; 3) modify penalty provisions; and 4) 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 amount that (1) is actually paid by an employer to an employee or to a third party on behalf of the employee, and (2) cannot be returned to the employer. With respect to amounts paid for the purpose of reimbursing future health care services, unused amounts must carry over from quarter to quarter and from year to year and remain available to the employee, even after the employee has changed jobs.

The proposal would specify, however, that an employer may recover unused amounts paid out for the purpose of reimbursing future health care services under two circumstances:

- The employee has not performed work for the employer for 18 months; or,
- The employee has died.

The proposal would also add a requirement that employers provide their employees with a written explanation of the employer's duties under the Health Care Security Ordinance, and what the employer is doing to comply with the Ordinance.

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 require that the fines always be one-and-one-half times the amount of the missed expenditures, but would eliminate the interest on the penalty amount and reduce the cap to \$100 per quarter for each employee. Other remedies and corrective actions available to enforce the Ordinance, including restitution to the injured employee, would remain unchanged.

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There is one significant difference between the version of the legislation on file, dated 9/13/2011, and the proposed amendment of the whole, dated 10/04/2011:

The 9/13/2011 draft provides that an employer may recover unused funds paid to a reimbursement account if "[a] former employee has not made a claim for any of the remaining available funds for 18 months (including a claim made on behalf of any other person eligible for reimbursement from health care expenses from the former employee's remaining available funds)."

The 10/04/2011 draft provides that an employer may recover unused funds paid to a reimbursement account if "[t]he covered employee has not performed work for the employer for 18 months."

In addition, the amendment of the whole fixes some formatting errors and corrects some cross-references in Section 14.4(e)(2).