



## **San Francisco's Health Care Ordinance finally goes into effect**

February, 2008

After a tortuous 18-month history of stays and deferments, San Francisco's Health Care Security Ordinance (HCSO) has finally gone into effect. Originally passed by the San Francisco Board of Supervisors in July 2006, the HCSO was challenged in court almost immediately, prompting the Board to defer the implementation of the HCSO until January 2008. In November 2007, however, a federal court judge ruled that the HCSO was preempted by ERISA and therefore unenforceable. Events took a 180-degree turn on January 9, when the Ninth Circuit Court of Appeals issued an order staying the district court's judgment pending the City's appeal. In short, despite the district court's decision, implementation of the HCSO is underway and San Francisco employers need to be prepared to comply with it.

The HCSO requires that covered employers make required health care expenditures to, or on behalf of, certain employees each quarter. "Covered employers" include private employers with an average of at least 20 employees working in San Francisco. Employers with 50 or more employees in San Francisco must comply immediately, while employers with 20-49 employees have until April 1, 2008 to do so.

"Covered employees" under the HCSO are individuals who work in San Francisco at least 10 hours a week and have been employed with the covered employer for at least 90 days. Private employers employing between 20 and 99 employees in San Francisco (and nonprofit organizations with 50 or more employees) are required to make health care expenditures on behalf of the employee of at least \$1.17 per hour. Private employers with more than 100 employees are required to make health care expenditures at a rate of \$1.76 per hour. A covered employee can voluntarily waive this requirement if the employee receives the appropriate level of health care services through a different employer, but the waiver must be revocable.

A health care expenditure is any amount paid either directly to employees or to third parties (e.g., health insurers or medical providers) for the purpose of providing health care services to employees, or reimbursing employees in these amounts for the cost of health insurance or medical bills. The employer's expenditure can be made in several ways, including via contribution to a health savings account, purchase of health care coverage, or reimbursement of insurance premiums, among others. If the employer does not make required health care expenditures on behalf of employees, it must meet its spending requirement by making payments directly to the City. These payments are used by the City to fund its Health Access Plan ("Healthy San Francisco").

The HCSO also requires covered employers to maintain accurate records of health care expenditures, and provide the City with "reasonable" access to these records. Failure to comply with these record keeping requirements creates a presumption that the employer failed to make the required health care expenditures for the time period for which the records are missing, absent clear and convincing evidence to the contrary.

For those employers who already provide a health plan to their employees, the HCSO will have little effect. Those employers without a current health plan, however, should take immediate steps to ensure that they meet the required health care expenditure amount or make the appropriate payment to the City as of the applicable effective date. For more information, contact your attorney or visit the HCSO website at:  
[http://www.sfgov.org/site/olse\\_index.asp?id=45168](http://www.sfgov.org/site/olse_index.asp?id=45168)



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