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**STEP-BY-STEP GUIDE TO
SAN FRANCISCO
HEALTH CARE SECURITY ORDINANCE**

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STEP-BY-STEP GUIDE TO SAN FRANCISCO HEALTH CARE SECURITY ORDINANCE

◆ WHAT IS THE SAN FRANCISCO HEALTH CARE SECURITY ORDINANCE?

- ❖ The San Francisco Health Care Security Ordinance (“HCSO”) became effective on January 9, 2008. The HCSO requires most San Francisco employers to make minimum health care expenditures for their employees, to track such expenditures, and to confirm compliance.¹
- ❖ This handout is intended to be a step-by-step guide to help you understand the basic requirements of the ordinance. Detailed information on compliance is available at <http://www.sfgov.org/site/olse-index.asp?id=45168>, however, we have compiled the most helpful documents from that website for you, and prepared this guide to walk you through it.
 - ◆ This guide provides general information and is not intended to provide legal advice as to any specific factual situation. If you have questions about the application of the HCSO to a particular situation, you should consult with legal counsel. The attorneys in our labor and employment practice group would be happy to assist you.
- ❖ There are three steps you must take to determine your company’s obligations under the HCSO (each of which is described in more detail below, and in the flowchart attached to this handout):
 - ◆ Is your company a “covered employer” as defined by the HCSO?
 - ◆ If so, then are any of your employees covered by the HCSO and eligible for health care expenditures?
 - ◆ If so, then for each employee so covered, have you made health care expenditures that meet or exceed the minimum requirements for each of your covered and eligible employees in the current quarter?

¹ A federal district court had ruled that the HCSO was unlawful, but the Ninth Circuit Court of Appeals issued a ruling on January 9, 2008 that allowed the HCSO to go into effect while the City appeals the District Court’s ruling. Until the appeal is resolved employers in San Francisco must comply with the HCSO.

◆ **STEP #1: ARE YOU A COVERED EMPLOYER?**

- ❖ In very general terms, you are a covered employer if you: (1) are a for-profit business that employs more than 20 persons in any location; or (2) are a non-profit business that employs more than 50 persons in any location.
 - ◆ If you are a covered employer, you must continue to step 2.
 - ◆ If you are not a covered employer, you do not need to comply with the HCSO, and you need not proceed to step 2.
- ❖ Make sure you count your employees correctly. To do so, refer to page two of the attached flowchart, and pages 4-5 of the attached FAQs (numbers 11-17). These FAQs address such issues as: whether to count employees who do not work in San Francisco, how to determine an average for a fluctuating workforce, and how to calculate the number of employees for a business with multiple locations (both inside and outside of SF).

◆ **STEP #2: ARE ANY OF YOUR EMPLOYEES COVERED BY THE HCSO AND ELIGIBLE FOR HEALTH CARE EXPENDITURES?**

- ❖ If you are a covered employer, then this next step requires you to determine whether each of your employees is covered by the HCSO and eligible for health care expenditures. This analysis must be done for each employee every quarter.
 - ◆ In practical terms, this means you need to go through your entire employee roster every quarter, and evaluate which employees fall into certain exemptions.
- ❖ Step #2(a): The first sub-step is to evaluate whether any of your employees falls within any one of the following five exemptions (if the employee falls into any of these categories then the employee is exempt from coverage under the HCSO):
 - ◆ Exemption for a managerial, supervisory or confidential employee (defined consistent with federal labor law) who will earn more than \$76,851 in 2008 (or \$36.95 per hour for a 40-hour week).
 - ◆ Exemption for an employee covered by Medicare or TRICARE/ CHAMPUS (the federal health care and health benefits program for active duty and retired members of the uniformed services, their families and survivors).
 - ◆ Exemption for a trainee working for up to one year for a non-profit corporation in a bona fide training program consistent with federal law.

- ◆ Exemption for employees covered by the Health Care Accountability Ordinance (essentially employees of city contractors and city tenants).
- ◆ Exemption for employees who have signed an Employee Voluntary Waiver Form (indicating they receive health care services through another employer, either as an employee or relative of someone employed by that employer). A sample of such form is attached in the final section of this handout under forms.
 - ◇ If you understand that an employee is covered by another health plan, you may ask that employee to fill out the Waiver Form, and keep it on file. The waiver must be filled out on a yearly basis.
- ❖ Step #2(b): Each employee who does not fall within one of the exemptions is a covered employee, and you must move on to the second sub-step to determine eligibility for health care expenditures in the quarter. That second sub-step requires you to answer to questions for each covered employee, as follows:
 - ◆ First, has the employee been employed for at least 90 calendar days?
 - ◇ Note that the 90 days need not be continuous, consecutive or completed in the same calendar year.
 - ◆ And if so, then second, did the employee work an average of at least 10 hours per week during the quarter?
 - ◆ If the answer to both of these questions is YES, then the employee is eligible for health care expenditures in this quarter.
- ❖ For assistance in evaluating these questions, refer to page 3 of the attached flowchart and pages 5-7 of the attached FAQs (numbers 18-24). These FAQs address such issues as: how to determine if an employee worked sufficient hours (which would apply to on-call employees); whether independent contractors are covered employees; and explains what a voluntary waiver form is and when it is valid.
- ◆ **STEP #3: DO YOUR HEALTH CARE EXPENDITURES FOR EACH OF YOUR COVERED AND ELIGIBLE EMPLOYEES MEET OR EXCEED THE MINIMUM REQUIREMENTS?**
 - ❖ If you are a covered employer, with covered and eligible employees, then this next step requires you to perform calculations to determine whether your health care expenditures meet or exceed the minimum requirements under the HCSO.

- ◆ The general rule is that these calculations must be made for each covered and eligible employee.
- ◆ However, if you provide uniform coverage to some or all of your employees (such as an HMO or PPO), you may perform the calculations in the aggregate. See FAQ #29 for a more detailed explanation.
- ❖ Sub-Step #3(a): Calculate the required health care expenditure for each covered and eligible employee by multiplying the applicable expenditure rate (from the chart below) with the hours paid to the employee during this quarter (i.e., expenditure rate x hours paid = required health care expenditure).

Employer Health Care Expenditure Rate Schedule			
Business Size	January 1, 2008	April 1, 2008	January 1, 2009
100+ Employees	\$1.76/hour	\$1.76/hour	\$1.85/hour
50-99 Employees	\$1.17/hour	\$1.17/hour	\$1.23/hour
20-49 Employees	Not Applicable	\$1.17/hour	\$1.23/hour
1-19 Employees	Not Applicable		

**Non-Profits with less than 50 employees are exempt from the spending requirement.*

- ◆ If you have a uniform coverage and/or a self-funded plan, you may perform these calculations in the aggregate in one of two ways: (1) you may include only those employees covered by the HCSO; or (2) you may include all employees who received the same health coverage in that quarter (such as the same HMO or PPO). See FAQ #39-40.
- ◆ An additional complexity involves how to calculate “hours paid.” On this issue refer to pages 9-11 of the attached FAQs (numbers 32-38), addressing whether to include overtime and paid time off, what figure to use for exempt employees, and when and how to use the applicable cap (172 hours per month and 516 hours per quarter).
- ❖ Sub-Step #3(b): Calculate the sum of all health care expenditures that have been made to or for the benefit of this covered and eligible employee (or to the group of eligible employees if you are aggregating) during this quarter.
- ◆ Some examples of health care expenditures that meet HCSO requirements include: paying health insurance premiums for the covered employee; paying health and welfare benefits to a union to provide benefits to your employees; payments made directly to a health care provider on behalf of

the employee; and cash reimbursements to the covered employee for health care services. Note that payments made directly or indirectly for Medicare or workers' compensation benefits do not qualify as health care expenditures. See FAQ #27 for more details.

- ❖ **Sub-Step #3(c):** Subtract the figure in 3(b) (actual health care expenditures) from 3(a) (required health care expenditures).
 - ◆ If the difference is a positive number, you must make a health care expenditure meeting or exceeding this amount within 30 days of the end of the previous quarter.
 - ◇ See FAQ #41 for employer options to make up the difference, such as reducing the employee's share of the premiums for your current plan, choosing a more generous plan with higher employer premiums, or making payments to the City (which will then be used to set up a Medical Reimbursement Account for the Covered Employee).
 - ◆ If the difference is zero or a negative number, then you have met or exceeded the minimum expenditure required under the HCSO and have no further spending obligations for this employee during this quarter.
 - ◆ You may have a situation where the difference is positive for some employees (such as on-call or part-time employees who do not work enough hours to qualify for your company's benefit plan), yet negative for others (your full-time workforce). In such cases, you need only make additional health care expenditures for those employees yielding a positive number in this part of the calculation.

◆ **DEADLINES FOR COMPLIANCE AND OTHER LOGISTICS**

- ❖ Health Care Expenditures (if you haven't met them for each covered and eligible employee in that quarter) must be made by the 30th day of the month following the end of the quarter, as follows.

Quarter	Deadline for Making Health Care Expenditure
1st (1/1/08 through 3/31/08)	4/30/08
2nd (4/1/08 through 6/30/08)	7/30/08
3rd (7/1/08 through 9/30/08)	10/30/08
4th (10/1/08 through 12/31/08)	1/30/09

- ❖ The first deadline is **April 30, 2008** for employers with 50 or more employees.

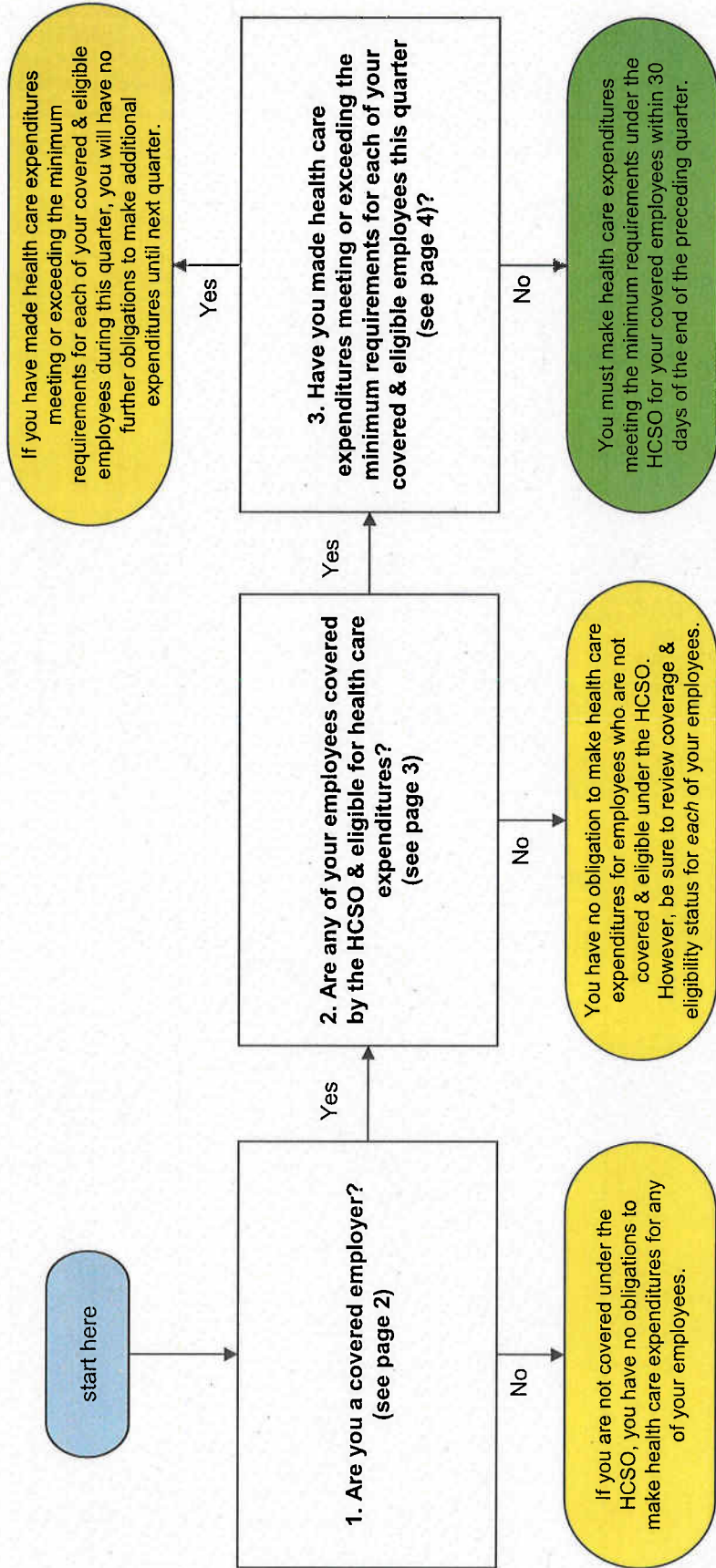
- ◆ The first deadline is **July 30, 2008** for for-profit employers with between 20 and 49 employees.
- ◆ As a reminder, for-profit employers with fewer than 20 employees, and non-profit employers with fewer than 50 employees, are exempt from the spending requirement.
- ❖ Employers must retain proof of compliance with the HCSO, and must report their annual Health Care Expenditures on an annual basis. See FAQs #47 and #48 for details.
 - ◆ The annual reporting must be done on the Mandatory Annual Reporting Form, a sample of which is attached in the final section of this handout. The Mandatory Annual Reporting Form will be mailed to all registered businesses in San Francisco annually.
 - ◆ The first form will likely be mailed in January 2008 and will cover only voluntary expenditures in 2007. This information will be used as a baseline for subsequent years. There will be a specific due date on the form, which we understand will likely be in March 2008.
- ❖ Employers will face stiff penalties for non-compliance. Non-compliant employers will be ordered to make the required health care expenditure payments retroactively, pay 10% interest, and pay penalties of up to \$1,000 for each employee for each week that such expenditures were not made!

FLOWCHART



Steps to Determine Whether a Covered Employer Has Met its Spending Requirement under the SF Health Care Security Ordinance (HCSO)

This document is intended to provide general guidance to employers and employees about the Employer Spending Requirements of the Health Care Security Ordinance (HCSO). For further inquiries regarding the HCSO, please call (415) 554-7892 or email HCSO@sfgov.org.



A covered employer must perform each of the steps above to determine whether it is required to make a health care expenditure for any of its covered employees. These steps should be reviewed each quarter and any time changes in an employee's coverage and eligibility status occur.

