



# 2021 San Francisco Health Care Expenditure Rates Released

The following general summary is intended to educate employers and plan sponsors on the potential effects of recent government guidance on employee benefit plans. This summary is not and should not be construed as legal or tax advice. The government's guidance is complex and very fact specific. As always, we strongly encourage employers and plan sponsors to consult competent legal or benefits counsel for all guidance on how the actions apply in their circumstances.

The San Francisco Office of Labor Standards Enforcement recently released updated Health Care Security Ordinance (HCSO)<sup>1</sup> required health expenditure rates for 2021.

## Background

The HCSO provides individuals who work in San Francisco and qualify as employees entitled to minimum wage with access to affordable healthcare through a Health Access Program. The HCSO requires "Covered Employers" to spend a minimum amount of money each quarter towards the healthcare of their "Covered Employees."

For purposes of the HCSO, a Covered Employer employs one or more workers within the geographic boundaries of the City and County of San Francisco, are required to obtain a valid San Francisco business registration certificate<sup>2</sup>, and employ at least 20 employees (or at least 50 for a nonprofit organization) worldwide. To determine workforce size, employers must count all employees irrespective of where they work or reside. The expenditure, however, applies only for hours worked in San Francisco.

Covered Employees are defined by the HCSO as having been employed by the employer for at least 90 days, have performed at least 8 hours of work in San Francisco, and are not employees who:

- have signed a waiver form<sup>3</sup> voluntarily waiving their right to have employers make Health Care Expenditures for their respective benefit;
- qualify as managers, supervisors, or confidential employees<sup>4</sup> **and** earn more than the applicable salary exemption amount (\$104,761 in 2020; the 2021 salary exemption amount has not been announced);
- are covered by Medicare or TRICARE;
- are employed by a non-profit corporation as a trainee in bona fide training; or
- receive health care benefits pursuant to the San Francisco Health Care Accountability Ordinance.<sup>5</sup>

## Remote Employees

As the COVID-19 outbreak continues, many employees are engaging in telework. Covered Employees will not be required to make Health Care Expenditures for any employees who work outside of San Francisco exclusively during the quarter (as they will not have worked at least 8 hours per week in San Francisco).

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<sup>1</sup> <https://sfgov.org/olse/health-care-security-ordinance-hcso>

<sup>2</sup> <http://sftreasurer.org/registration>

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<http://sfgov.org/olse/sites/default/files/Document/HCSO%20Files/Employee%20Voluntary%20Waiver%20Form%20-%202011.01%20Final.pdf>

<sup>4</sup> <https://sfgov.org/olse/C-COVERED-employees#managersupervisor>

<sup>5</sup> <https://sfgov.org/olse/health-care-accountability-ordinance-hcao>

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Employees whose home offices are within San Francisco (and for whom none of the exemptions listed above apply), however, would still qualify as Covered Employees for whom expenditures would still be required.

## Updated Rates

The 2021 Health Care Expenditure rates – and previous years' rate history – is as follows:

Employer Size	Rate Per Hour						
	2015	2016	2017	2018	2019	2020	2021
Large Employers (100+ employees)	\$ 2.48	\$ 2.53	\$ 2.64	\$ 2.83	\$ 2.93	\$ 3.08	\$ 3.18
Medium Employers (20-99 employees) Nonprofit (50-99 employees)	\$ 1.65	\$ 1.68	\$ 1.76	\$ 1.89	\$ 1.95	\$ 2.05	\$ 2.12
Small employers (0-19 employees) Nonprofit (0-49 employees)	Exempt						

## Irrevocable Expenditures

On June 17, 2014, the San Francisco Board of Supervisors amended the HCSO to phase in, over a three-year period, a requirement that all health care expenditures made by Covered Employers on behalf of their Covered Employees be made “irrevocably.” Employers previously had the option to make health care expenditures on behalf of their Covered Employees either with irrevocable expenditures, such as insurance premium payments, or with revocable expenditures, such as allocations to Health Reimbursement Arrangements (HRAs) where unspent funds can be returned to the employer.

The three-year “phase-in” required that 60 percent of the employer expenditure in 2015 be irrevocable; 80 percent be irrevocable in 2016; and all employer health care expenditures be irrevocable on and after January 1, 2017. The amended Ordinance also permits employees to voluntarily waive the unused balance of revocable expenditures made on their respective behalves for hours worked prior to January 1, 2014.

The Ordinance explains the benefits available for employees of employers that contribute to the SF City Option program. Based on their eligibility, employees will be offered one of three health benefits through the employer SF City Option program:

- SF Covered Medical Reimbursement Accounts,
- Healthy San Francisco, or
- SF Medical Reimbursement Accounts.

The Administrative Guidance for the HCSO is available with sections concerning “Revocable and Irrevocable Health Care Expenditures,” “Calculating Required Health Care Expenditures,” and “Contributing to the SF City Option.” For details about these and other requirements, Frequently Asked Questions, or other resources, please visit the San Francisco government website.<sup>6</sup>

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Nothing in this communication is intended as legal, tax, financial or medical advice. We assume no liability whatsoever in connection with its use, nor are these comments directed to specific situations. Always consult a professional when making life-changing decisions.

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<sup>6</sup> [www.sfgov.org/olse/hcso](http://www.sfgov.org/olse/hcso)