

Law & Policy Group

GRIST

San Francisco posts 2024 Health Care Expenditure rates

*By Rich Glass and Patty Cartwright
Aug. 25, 2023*

In this article

[HCE mandate](#) | [HCE creditable expenses](#) | [Updated rates](#) | [Self-funded plan expenditures](#) | [Employer next steps](#) | [Related resources](#)

San Francisco has posted the 2024 Health Care Expenditure (HCE) rates under the [Health Care Security Ordinance](#) (HCSO) rules. The HCSO applies to all employers that must obtain a [San Francisco business registration certificate](#) and have at least 20 employees in any location if at least one works in the city or county of San Francisco.

HCE mandate

The HCE is the minimum amount covered employers must spend on healthcare for each hour worked by a covered employee, defined as anyone employed for more than 90 days who regularly works at least eight hours a week in San Francisco. To determine workforce size, employers must count all of their employees, no matter where they live or work. However, the expenditure applies only for hours worked in San Francisco — i.e., in ZIP codes starting with 941xx. However, special considerations apply for the 94128 ZIP code (i.e., the San Francisco International Airport).

Employers subject to the HCSO make HCEs on a quarterly basis. Self-funded plans may be able to make annual HCE payments based on claim data and plan design (see the [rules](#) below). Rules limit the types of group health plan expenses that are considered HCEs, and employers may need to make up the difference between the required HCE and their contribution toward an employee's health coverage.

An Annual Reporting Form (ARF) is normally due each April 30 (or the next business day if April 30 is on a weekend). The ARF demonstrates HCSO compliance for the prior calendar year and is submitted electronically via a website maintained by the Office of Labor Standards Enforcement (OLSE). Once the ARF portal closes, there is no mechanism to file the ARF electronically.

Covered employers

A covered employer under HCSO includes an employer who meets all of these requirements:

- Employs one or more workers within the geographic boundaries of the City and County of San Francisco
- Is required to obtain a valid San Francisco business registration certificate under [applicable law](#)
- Employs at least 20 individuals (for-profit employers) or at least 50 individuals (nonprofit employers), regardless of work location

Excluded employees

Covered employees exclude managers, supervisors and confidential employees — as defined under [HCSO rules](#), not an employer's definition — earning at least \$114,141 annually (or \$54.88 per hour) in 2023. Beginning Jan. 1, 2024, that amount rises to \$121,372 per year (or \$58.35 per hour). Employees covered by Medicare or TRICARE may also be excluded if the employer can document employee eligibility. Employees may be excluded in their first 90 days of employment or if they work fewer than eight hours per week in San Francisco. In addition, the ordinance excludes employees covered by the [Health Care Accountability Ordinance](#) for city contractors or tenants.

Telecommuters

Telecommuters present additional challenges for employers under the HCSO. During the COVID-19 pandemic, many employees telecommuted from a San Francisco address and became subject to the law, and some San Francisco employees worked remotely from home and could not come into the city/county during the public health emergency.

A 2021 HCSO amendment ([Ordinance 92-21](#)) clarified that work locations trigger the HCE. An employer must provide the HCE for a covered employee when the employer's office or worksite is in San Francisco or the employee works from home in San Francisco as a telecommuter. The employer does not have to provide the HCE for employees who usually telecommute from outside the city in neighboring locations, such as Oakland. However, the legislation required HCSO coverage for San Francisco employees working remotely solely due to public health orders, meaning HCEs could be due for an employee working remotely outside of San Francisco.

Since the city's [public health order](#) (last updated on Dec. 21, 2022) eliminated the remote-work recommendation, HCSO expenditure requirements do not currently apply to employees telecommuting outside of San Francisco. That could change if the city reinstates earlier public health restrictions.

This COVID-19 issue may still arise when an employer undertakes a voluntary corrective action, which typically entails a three-year look-back period.

Waivers

Employers may ask workers who have other employer-provided coverage to waive the expenditure, using the authorized HCSO [voluntary waiver form](#). However, employees with other employer coverage do not have to waive the expenditure and can revoke the waiver any time. Waiver forms must disclose these employee rights for the waiver to be valid. If employees with other coverage do not sign the voluntary waiver, an employer must make up the expenditure in some other way. The waiver form must be signed each year and cannot be retroactive. Failure to use the proper waiver form and/or follow the waiver process could result in noncompliance penalties.

HCE creditable expenses

Employers can count toward their required HCE any premium payments to an insurance provider for medical, dental or vision coverage, as well as contributions to health savings accounts or other irrevocable reimbursement accounts. Only amounts irrevocably paid to third parties qualify as HCEs.

Employer contributions to health reimbursement arrangements (HRAs) are typically considered revocable. For an HRA contribution to be irrevocable, it must meet both of these conditions:

- Employers must pay contributions into a separate account on the employee's behalf within 30 days of the end of each quarter.
- Employers may never recover any portion of the HRA contribution, even when employment ends.

Employers whose expenditures fall short of the required amount have 30 days after the end of the calendar quarter to remit the difference to the [SF City Option program](#). These payments fund a [medical reimbursement account](#) (MRA) in the employee's name. Special annual — rather than quarterly — reconciliation rules apply for some self-funded group health plans, as described [below](#).

Uniform health plan

A covered employer may comply with the HCSO by providing uniform health coverage to some or all covered employees. The plan must have the same benefit design — including cost sharing, coverage tiers and eligibility criteria — for all participating employees. The average hourly HCE is calculated by dividing the total required HCEs for employees in the uniform health plan by the total hours paid to each of those employees during that quarter. (Total hours paid are capped at 172 per employee per month.) This method applies only to employees enrolled in the uniform health plan.

Updated rates

The current and updated HCE hourly rates are as follows:

Employer size	Number of workers worldwide	2023 expenditure rate	2024 expenditure rate
Large	All employers with 100+ workers	\$3.40 per hour	\$3.51 per hour
Medium	Businesses with 20–99 workers Nonprofits with 50–99 workers	\$2.27 per hour	\$2.34 per hour
Small	Businesses with 0–19 workers Nonprofits with 0–49 workers	Exempt	Exempt

Self-funded plan expenditures

HCEs must reflect amounts irrevocably paid to third parties. [Rules](#) prohibit employers from using continuation coverage rates under the federal Consolidated Omnibus Budget Reconciliation Act of 1986 (better known as COBRA) to determine quarterly expenditures for employees enrolled in self-funded plans. Instead, these plans must use one of two options to determine expenditures: fixed expenditures or paid healthcare claims. These methods apply only to HCEs for employees enrolled in the plan:

- **Fixed expenditures.** Under this option, the employer pays premiums and/or fees to the third-party administrator of a self-funded plan, and no portion of those premiums or fees are returned to the employer. The premiums and fees paid for a calendar quarter must meet or exceed the required HCE for each covered employee for that quarter.
- **Paid healthcare claims.** Under this option, the employer pays claims when incurred, and the prior year's average hourly expenditures must meet or exceed that year's HCE rate for the employer. This option is limited to uniform health plans, as described [earlier](#). The employer can choose to include only covered employees (the eligible San Francisco population) or all employees participating in the uniform health plan. Employers using this option do not need to reconcile expenditures every quarter for employees covered under the plan. Instead, if actual paid claims during the calendar year are less than the required HCE, employers can make additional contributions (known as “top-off payments”) through the end of February of the next year.

Practical considerations

Most self-funded plans have both fixed expenditures and paid healthcare claim components. The rules do not explicitly recognize situations in which an employer uses a combination of the two to meet the minimum expenditure. The OLSE has provided informal guidance that recognizes the combined use of both types of expenses but does not include specifics. For example, the required frequency of compliance determination (quarterly vs. annually) differs for the two types.

The rules also do not explicitly address stop-loss reimbursements, prescription drug rebates, paid claim adjustments (like subrogation), returned administrative fees (for example, performance guarantee penalties) and other variables. Whether these types of transactions should count as returned fixed expenditures or offset paid claims is unclear. The rules do not currently require including these transactions in the HCSO compliance determination.

Employer next steps

Covered employers with San Francisco workers will need to ensure their health benefits comply with the newly updated 2024 HCE amounts and understand the HCE's application to San Francisco workers. Once premiums are set for insured plans, plan sponsors can review any deficits and determine the best approach to make up any shortfall and make the quarterly payments. Self-funded plans may want to work with their third-party administrators and actuaries to evaluate spending options. Payments for self-funded plans may be measured quarterly or annually, subject to plan design and the availability of claims data.

An employer that discovers an HCSO failure can consider making a voluntary correction with the OLSE, which would require calculating and paying any missed HCEs for all covered employees over a three-year look-back period.

Finally, employers subject to the HCSO should become familiar with the [notice](#) posting requirements, [complaint](#) process and [penalties](#) for noncompliance.

Related resources

Non-Mercer resources

- [Health Care Security Ordinance resources](#) (San Francisco OLSE)
- [Health Care Accountability Ordinance resources](#) (San Francisco OLSE)
- [San Francisco City Option](#)
- [San Francisco business registration](#) (San Francisco Office of the Treasurer & Tax Collector)
- [Voluntary waiver form](#) (San Francisco OLSE, Nov. 1, 2017)
- [Amended HCSO rules](#) (San Francisco OLSE, Oct. 29, 2017)

Mercer Law & Policy resources

- [San Francisco Health Care Expenditure rates released for 2023](#) (Aug. 8, 2022)
- [San Francisco's annual Health Care Expenditure report due May 2](#) (March 31, 2022)

Note: Mercer is not engaged in the practice of law, accounting or medicine. Any commentary in this article does not constitute and is not a substitute for legal, tax or medical advice. Readers of this article should consult a legal, tax or medical expert for advice on those matters.