



San Francisco updates city option, 2022 health care expenditure rates

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San Francisco has posted the 2022 health care expenditure (HCE) rates required by the city's [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 San Francisco. The city also has consolidated its HCE city options into one.

HCE mandate

The HCE is the minimum amount employers must spend on healthcare for each hour worked by a HCSO-covered employee. Covered employees include 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 employees, no matter where they live or work. However, the expenditure applies only for hours worked in San Francisco.

Regulations limit the types of expenses considered an HCE. Annual reports are normally due each April 30. While the public health emergency cancelled the reports due in 2020 and 2021, employers must continue to make the required HCE. Reporting is expected to resume in 2022.

Excluded employees

Covered employees exclude managers, supervisors and confidential employees earning at least \$107,991 annually (or \$51.92 per hour) in 2021. Beginning Jan. 1, 2022, that amount rises to \$109,643 per year (or \$52.71 per hour). Employees covered by Medicare or TRICARE may also be excluded if the employer can document employee eligibility. In addition, the ordinance excludes employees covered by the [Health Care Accountability Ordinance](#) for city contractors or lessees.

Telecommuters

A 2021 HCSO amendment ([Ordinance 92-21](#)) clarifies work locations that 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. The employer doesn't have to provide the HCE for employees who usually telecommute outside the city in neighboring locations, such as Oakland. However, the new legislation requires HCSO coverage for San Francisco employees working remotely solely due to public health orders.

Since the city's [June 11 public health order](#) eliminated the remote-work recommendation as of June 15, employees telecommuting outside of San Francisco are no longer HCSO-covered. That could change if the city reinstates earlier public health restrictions. The Board of Supervisors intends to further address the telework challenges in a future ordinance.

Waivers

Employers may ask workers who have other employer-provided coverage to waive the expenditure, using the authorized [voluntary waiver form](#). However, employees with other employer coverage don't 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 the employee has other coverage but doesn't sign the voluntary waiver, the employer must make up the expenditure in some other way. Failure to use the proper waiver form 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, Archer medical savings accounts or other irrevocable reimbursement accounts. Only amounts irrevocably paid to third parties qualify as HCEs.

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 [City Option program](#). These payments are allocated to a [medical reimbursement account](#) (MRA) in the employee's name. Special annual — rather than quarterly — reconciliation rules apply for some self-insured group health plans, as described [below](#).

Change to the city option

The [San Francisco City Option](#) has transitioned from multiple options to one: the San Francisco MRA. As of Aug. 3, 2021, all employees with available employer contributions in other programs — such as Healthy San Francisco — became eligible for a city MRA. Employees who have not yet enrolled in a City Option benefit will be able to complete an enrollment form and have any available contributions moved to a MRA.

Uniform health plan

A covered employer may comply with the HCSO by providing a uniform health plan to some or all of its covered employees. The plan must have the same benefit design — including cost sharing, coverage tiers and eligibility criteria — for all covered employees. The average hourly HCE is calculated by dividing the total required HCEs for employees in the uniform plan by the total hours payable to each of those employees during that quarter. This method applies only to employees enrolled in the uniform plan.

Updated rates

The current and updated HCE hourly rates are as follows:

Employer size	Number of workers	2021 expenditure rate	2022 expenditure rate
Large	All employers with 100+ workers	\$3.18 per hour	\$3.30 per hour
Medium	Businesses with 20–99 workers Nonprofits with 50–99 workers	\$2.12 per hour	\$2.20 per hour
Small	Businesses with 0–19 workers Nonprofits with 0–49 workers	Exempt	Exempt

Self-insured plan expenditures

HCEs must reflect amounts irrevocably paid to third parties. [Rules](#) that took effect in 2017 clarify that employers cannot use a COBRA-equivalent rate to determine their 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-insured 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 as they are 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 plan. Employers using this option don't need to reconcile expenditures every quarter for employees covered under the plan. Instead, if actual paid claims during the calendar year don't meet the required HCE, employers can make additional contributions 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 don't explicitly recognize situations in which an employer uses the combination of the two to meet the minimum expenditure. The San Francisco Office of Labor Standards Enforcement (OLSE) has provided informal guidance that recognizes the combined use of both types of expenses but doesn't include specifics. For example, the required frequency of compliance determination (quarterly vs. annual) differs for the two types.

The rules also don't explicitly address stop-loss reimbursements, prescription drug rebates, paid claim adjustments (e.g. subrogation), returned administrative fees (i.e., performance guarantee penalties) and certain other variables.

Whether these types of transactions should count as returned fixed expenditures or offset paid claims is unclear. The rules don't currently require including these transactions in the HCSO compliance determination.

Employer next steps

Employers with workers in San Francisco will need to adjust 2022 expenditures to meet the new HCE standards. Once premiums are set for insured plans, plan sponsors can review any deficits and determine the best approach to make up any shortfall. Self-funded plans may want to work with their third-party administrators and actuaries to evaluate spending options.

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. 10, 2017)

Mercer Law & Policy resources

- [San Francisco posts 2021 health care expenditure rates](#) (Aug. 31, 2020)
- [San Francisco's annual health care expenditure report due April 30](#) (March 26, 2019)

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