Health Care Security Ordinance: Self-funded Health Plan Calculations

Office of Labor Standards Enforcement (OLSE)

<table>
<thead>
<tr>
<th>Ellen Love</th>
<th>Maura Prendiville</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Administrative Analyst</td>
<td>Supervising Compliance Officer</td>
</tr>
</tbody>
</table>
Agenda

1. HCSO Background
2. New Rules for Self-Funded Plans
3. Calculating Average Expenditures for 2018
4. Making Top-off Payments
5. Best Practices
Office of Labor Standards Enforcement (OLSE)

Enforces an array of 15 San Francisco labor ordinances, including:

- Paid Parental Leave (2017)
- Lactation in the Workplace (2018)
- Consideration of Salary History (2018)
- Health Care Security
- Minimum Wage
- Family Friendly
- Fair Chance
- Paid Sick Leave
- Formula Retail Employee Rights

OLSE has investigative authority & enforcement power, and offers technical assistance for employers.
HCSO Background

- The Health Care Security Ordinance (HCSO) requires covered employers to make health care expenditures for covered employees at a specific rate.
- **2018 Large Employer rate was $2.83/hour.**
- Large employers are those with 100 or more employees worldwide.
- New Rules in effect October 29, 2017 changed how the City evaluates expenditures under self-funded insurance plans.
- **Full text of HCSO Rules available at** [http://sfgov.org/olse/hcso](http://sfgov.org/olse/hcso)
New Rules for Self-funded Insurance

• Pursuant to HCSO Rules changed in Oct. 2017:

  1) Employers may no longer use the COBRA premium rate to calculate their required health care expenditures (beginning 1/1/18);

  2) For self-funded plans in which the employer pays claims as they are incurred, the employer may calculate the health care expenditures on an annual basis;

  3) If the employer’s annual spend fell short of the HCSO expenditure rate, the employer must make “top-off” payments for employees enrolled in these plans by Feb 28th of the following year.
Self-Funded Insurance Plan Calculations

**HCSO Rule 5.9**

- **5.9(a): employer pays a fixed monthly premium to a carrier**
  - the premiums are the cost, and employer must satisfy the spending requirement each quarter.

- **5.9(b): employer pays claims as they are incurred**
  - the employer may look at the annual spend
  - Note: for employees enrolled in traditional insurance plans, or employees who are not enrolled in the company’s insurance, the regular quarterly deadlines still apply.
  - How does the employer assess the annual “cost” of the plan?
Average Expenditure Calculation

\[
\text{Total Spending} \div \text{Total Hours Payable} = \text{Average Hourly Expenditure Rate}
\]
**Calculation Notes – Uniform Health Plans**

- Employers are only permitted to average expenditures for employees enrolled in a uniform health plan.

- Only average expenditures for employees must be on the same uniform plan
  - Kaiser Bronze cannot be averaged with Kaiser Silver

Office of Labor Standards Enforcement
Calculation Notes – Geography and Max Hours

- Employer can opt to average total costs and total hours for:
  A. all employees in the plan, or (nationwide)
  B. all “Covered Employees” (San Francisco only) in the plan.
  C. Expenditures for all employees in the plan nation-wide and an estimated hours per employee of 172 hours per month.

- Note: HCSO requires expenditures for a maximum of 172 Hrs./Mo. A full-time employee will have 2064 hours in a year (not 2080).
Calculation Notes – Time Frame

• To be compliant, the employer must demonstrate that “the preceding year’s average hourly expenditures meet or exceed that year’s expenditure rate.”

• OLSE will issue future guidance clarifying the phrases “preceding year” and “that year.”
Calculation Notes – Time Frame

• For 2018 calculations, employers may use either of the following:
  (1) Average actual 2018 expenditures (claims paid) equals the 2018 rate; OR
  (2) Average actual 2017 expenditures equals the 2018 rate.

• OLSE is offering this flexibility in the first year of the transition to new rules. For 2019 compliance, employers will need to ensure actual 2019 expenditures match the 2019 rate ($2.93/hr).

• If 2018 was the employer’s first year with a self-funded plan, it will need to look at the value of actual claims paid in 2018.
Calculation Notes – Included Expenses

• Count only claims **paid** in 2018 (not claims incurred).
• If employer receives a refund for a “good claims year,” the amount refunded **may not** be included in the expenditure calculation.
• Claims paid for dependents enrolled in the plan may also be included.
Calculation Notes – Included Expenses:

• All claims paid for employees’ Health Care Services

• Some types of reasonable fees may be included as expenditures; for example, stop loss insurance.

• Other fees cannot be included as expenditures; for example, consulting fees, or fees associated with compliance with other laws.
  • Contact OLSE for more information regarding which fees are acceptable.
Self-Funded Calculation Example

Option A: Nationwide Average

Acme Employer 350 employees enrolled in the self-funded plan. 300 are full-time and 50 are part-time employees working 20 hrs/week.

<table>
<thead>
<tr>
<th>Total Claims Paid by Employer</th>
<th>Total Payable Hours</th>
<th>Average HourlyExpenditure</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,508,000</td>
<td>300 FT employees (x2064 hrs) and 50 PT employees (x1032 hrs) = 670,800 hrs</td>
<td>$1,508,000 / 670,800 Hrs. = $2.24 per Hr.</td>
<td>$2.24 per hour falls short of the 2018 Large Employer rate of $2.83.</td>
</tr>
</tbody>
</table>

Do NOT count employee’s share of premium.

Include paid vacation hours, sick time, etc. (172 Hr. /mo. maximum)

Calculation: Total Claims Paid / Total Payable Hours

Employer must make additional expenditures of $.59 per Hours Payable to each employee covered by the HCSO.
## Self-Funded Calculation Example

### Option B: Covered Employee-only Average

25 SF employees enrolled in the plan are all covered by the HCSO.

<table>
<thead>
<tr>
<th>Claims Paid by Employer for SF Employees</th>
<th>SF Payable Hours</th>
<th>Average Hourly Expenditure</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>$120,000</td>
<td>25 Employees x 2064 Hrs. = 51,600 Hrs.</td>
<td>$120,000 / 51,600 Hrs. = $2.33 per Hr.</td>
<td>$2.33 does not meet the 2018 Large Employer rate of $2.83.</td>
</tr>
</tbody>
</table>

Do NOT count employee’s share of premium.

Include paid vacation hours, sick time, etc. (172 Hr./mo maximum)

Calculation: Total Claims Paid / Total Payable Hours

Employer must make additional expenditures of $.50 per Hours Payable to each employees covered by the HCSO

Office of Labor Standards Enforcement
Self-Funded Calculation Example

Option C: Employer can’t isolate SF claims, and can’t match up nationwide hours with nationwide enrollment info.

<table>
<thead>
<tr>
<th>Claims paid for all employees enrolled nationwide</th>
<th>Use 2064 annual payable hours (172/mo)</th>
<th>Average Hourly Expenditure</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>$3,500,000 claims paid for 950 employees enrolled</td>
<td>950 employees enrolled x 2064 Hrs. = 1,960,800 Hrs.</td>
<td>$3,500,000 / 1,960,800 Hrs. = $1.78 per Hr.</td>
<td>$1.78 does not meet the 2018 Large Employer rate of $2.83.</td>
</tr>
</tbody>
</table>

*Total # employees enrolled during calendar year, regardless of length of enrollment.

Use 2064 figure as a stand-in since e’er does not know actual payable hours for enrollees.

Calculation: Total Claims Paid / Total Payable Hours = hourly rate

Employer must make additional expenditures of $1.05 per Hour Payable to each employees covered by the HCSO

Office of Labor Standards Enforcement
Account for Other Health Care Expenditures

- Dental
- Vision
- HSA Contributions (employer only)
- Other irrevocable spending for Health Care Services
Questions?

Self-Funded Calculations
Self-Funded Insurance Plan Top-offs

- If average expenditures fall short of the required amount for 2018, the employer must make “top-off” payments by February 28, 2019.

- See HCSO Rule 5.10(3).
Self-Funded Insurance Plan Top offs:

**Who** to make top-off payments for:

- Only employees covered by the HCSO (in San Francisco).
  - Even if average expenditures were calculated using a nationwide average, top-off payments are owed only to the SF employees.

- Payment shall be made on a pro rata basis based on the number hours worked by the employee during the calendar year.

- Former employees should also get top-off payments.
Calculating the Top-off Payment Example

• Nationwide, Acme Employer has **200 full-time employees & 50 part-time employees** who all work 20hrs per week. All are enrolled in the same self-funded medical plan.

• **10 full-time employees** and **5 part-time employees** work in **San Francisco** and are covered by the HCSO.

• After completing the uniform coverage calculation, Acme determines that its nationwide average hourly expenditure in 2018 was **$2.24/Hr**.

• This is **$0.59/Hr. less than the $2.83/Hr. expenditure requirement** for Large Employers in 2018.
Calculating the Top-off: Example A
(employer calculated a $.59 shortfall)

<table>
<thead>
<tr>
<th></th>
<th>Payable Hrs in 2018 per Employee</th>
<th>Shortfall</th>
<th>Employees in SF covered by the HCSO</th>
<th>Total Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part time</td>
<td>86 hrs x 12 mo. = 1032</td>
<td>$0.59/hr x 1032 hrs = $608.88/person</td>
<td>5</td>
<td>5 x $608.88 = $3,044.40</td>
</tr>
<tr>
<td>Full time</td>
<td>172 hrs x 12 mo = 2064</td>
<td>$0.59/hr x 2064 hrs = $1,217.76/person</td>
<td>10</td>
<td>10 x $1,217.76 = $12,117.60</td>
</tr>
</tbody>
</table>

$15,162 in top off payments
Self-Funded Insurance Plan Top offs:

**How** to make top-off payments:
1. Deposits to the employee’s Health Savings Account; or
2. Deposits to the SF City Option program for the employee; or
3. Some other form of irrevocable expenditure.

- Ensure top-off payments can be distinguished from other 2019 expenditures.

- OLSE does not manage the SF City Option. Visit [http://sfcityoption.org](http://sfcityoption.org).
Questions?

Top Off Payments
Recordkeeping

• Employers must keep records for 4 years. (Rule 7.2)

• Self-funded employers should keep records of the following:
  • Calculation for expenditures of the self-funded plan(s);
  • Underlying data (record of claims paid, enrollment records, etc).
  • Calculations for determining the amount of the top-off payments;
  • Underlying data used to calculate the individual top-off payments (employee payroll records)
  • Copies of communications to employees regarding the top-off payments.
Best Practices for Self-Funded Employers

**NUMBER 1: COMMUNICATE WITH YOUR EMPLOYEES**

(If you don’t, they think you’re not complying with the HCSO!)

• Inform employees that they’re enrolled in a self-funded plan. Start this communication during open enrollment and in advance of significant benefits transitions (ie, switching from fully-funded to self-funded).

• Tell employees (current & former):
  • what the average spending was on the self-funded plan,
  • the dollar amount of the top-off payment,
  • and where the payment will be made.

• Consider using the Sample Letter on OLSE’s website.
Best Practices for Self-Funded Employers

• If the payment is being made to the City Option program, inform employees that:
  ▪ They will need to fill out a Program Finder Form before they can access the funds; and
  ▪ There can be a processing time of 2-4 weeks between the payment being made and employees being able to see and use the funds.

• Questions about the City Option should be directed to the City Option program, not OLSE.
  • Employer inquiries: (415) 615-4492; Employee inquiries: (415) 615-5720.
Best Practices for Self-Funded Employers

NUMBER 2: HAVE A KNOWLEDGEABLE POINT PERSON
(If you don’t, OLSE may think you’re not complying with the HCSO!)

• Employees are likely to have questions regarding why they are/are not getting a payment.

• If employees cannot get their questions answered by their employer or benefits administrator, they are likely to contact OLSE.

• If OLSE also cannot get questions answered in a timely manner, the employer is likely to be audited.
Best Practices for Self-Funded Employers

NUMBER 3: BE PROACTIVE NEXT YEAR

• If you expect to have a shortfall in 2019, you can avoid a large payment in February 2020 by making top-off payments throughout the year.

• This is not required, but can help the employer by spreading payments out.

• If you had a large shortfall for 2018, you may want to examine the employee share of cost. If that decreases, more people enroll, employer spending increases, and shortfall may be smaller next time.

• See the examples on instruction form.
HCSO Resources

- **Sign up** for OLSE updates
- **OLSE HCSO Website**
  - Self-funded instructions & examples
  - Rules & Administrative Guidance
  - Sample letters to employees
  - OLSE Official Notices
  - Annual Reporting Form
  - Employee Voluntary Waiver Form
- **Email us**: HCSO@sfgov.org
- **Call us**: (415) 554-7892