



# Health Care Security Ordinance: Self-funded Health Plan Calculations

Office of Labor Standards Enforcement (OLSE)  
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# Agenda

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4 Making Top-off Payments

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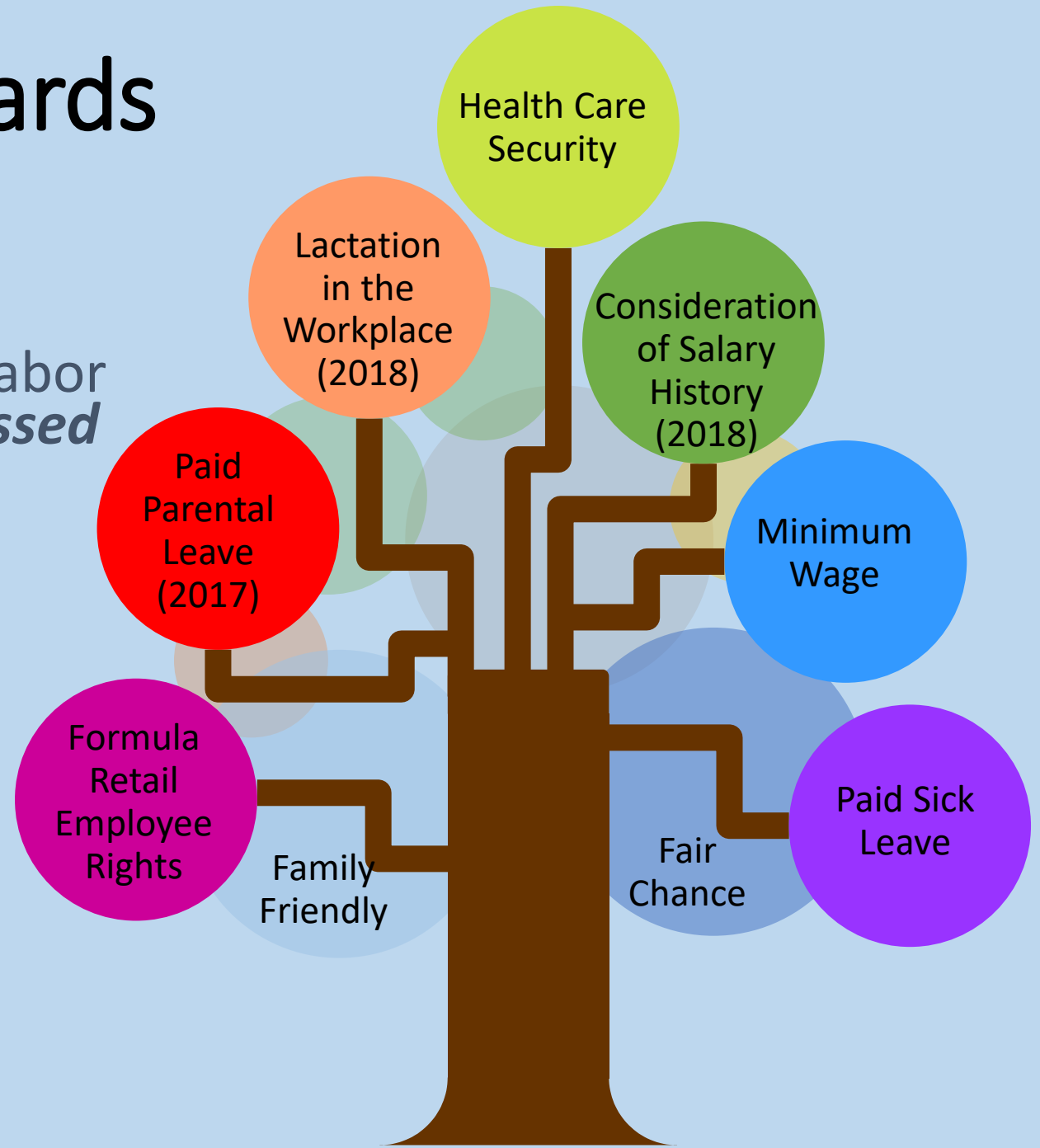


# Office of Labor Standards Enforcement (OLSE)

Enforces an array of San Francisco labor ordinances, *including new ones passed during the pandemic*

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

<https://sfgov.org/olse/>



# HCSO Background

- The Health Care Security Ordinance (HCSO) requires covered employers to make health care expenditures for covered employees at a specific rate.
- **2021 Large Employer rate was \$3.18/hour.** (For a full-time employee, this equates to \$546.96/mo, \$1,640.88/Q, \$6,563.52/yr).
- Large employers are those with 100 or more employees worldwide.
- New Rules in 2017 changed how the City evaluates expenditures under self-funded insurance plans.
- **Full text of HCSO Rules available at <http://sfgov.org/olse/hcso>**



# Overview: Rules for Self-funded Insurance

- 1) Using the COBRA premium rate to calculate required health care expenditures has not been permitted since 2018
- 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 the end of February of the following year.



**Remember, all other provisions of HCSO still apply!!!**

- **Quarterly spending deadlines still apply to employees who are covered by the HCSO and are:**
  - Enrolled in fully-funded health plans;
  - Choose not to enroll in your company's insurance;
  - Are not eligible for your company's insurance.

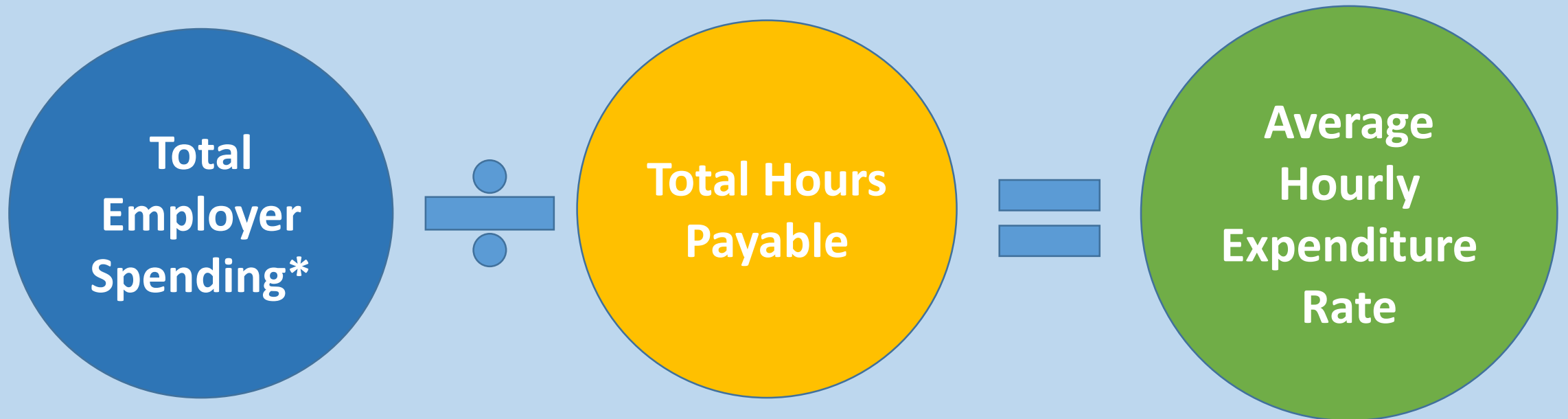
# Self-Funded Insurance Plan Calculations

## *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



**\*Employer spending does NOT include premium contributions from employees!  
You MUST subtract employee share of cost from amounts spent by employer.**





# Calculation Notes – Uniform Health Plans

- See [Rule 5.8](#) and [FAQ D9](#).
- 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



# Calculation Notes – Geography and Max Hours

- Employer can opt to average total costs and total hours for:

A. all employees in the plan (*nationwide*), or



B. all “Covered Employees” (San Francisco only) in the plan, or



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.” (Rule 5.9(b)).
- OLSE interprets Rule 5.9(b) to mean that a self-funded health plan may comply when the employer pays claims as they are incurred, and **that calendar year’s** average hourly expenditures meet or exceed **that calendar year’s** expenditure rate. *This is addressed on OLSE’s website under [Administrative Guidance D10](#).*
- For example, in early 2022, when employer assesses the cost of its 2021 plan, it must determine whether the 2021 average hourly expenditures met or exceeded the 2021 expenditure rate.



# Calculation Notes – Included Expenses

- Count only claims **paid** in 2021 (not claims incurred).
- Claims paid for dependents enrolled in the plan may also be included, assuming those claims are paid by the employer.
- **Remember, if employees pay premiums, you must subtract those dollar amounts from the claims.**



# Calculation Notes – Included Expenses:

- What is a “claim”? → Amounts paid directly to medical providers. Also includes expenditures that qualify as tax-deductible medical expenses under I.R.S. Publication 502, sec. 213—as well as medical care, services or goods having substantially the same purpose or effect. (See [Rule 5.11](#) and [Admin. Guidance E.5](#))
- 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.



# Refunds

- If employer receives a refund of any type for a “good claims year,” the amount refunded **may not** be included in the expenditure calculation. How does this work?
  - If employer receives a refund, or confirmation of the refund amount, prior to end of Feb., simply subtract that amount from the “claims” amount.
  - If employer receives a refund *after* it’s done the Feb. calculations, it must do a **second round of top-off payments** to the HCSO-covered employees.



# Self-Funded Calculation Example

## Option A: Nationwide Average

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

Total Claims Paid by Employer	Total Payable Hours	Average Hourly Expenditure	Compliance
\$1,508,000	300 FT employees (x2064 hrs) and 50 PT employees (x1032 hrs) = 670,800 hrs	$\$1,508,000 / 670,800$ Hrs. = \$2.248 per Hr. (round to \$2.25)	\$2.25 per hour falls short of the 2021 Large Employer rate of \$3.18.
Do NOT count employee's share of premium (subtract it if needed)	Include paid vacation hours, sick time, etc. (172 Hr. /mo. maximum)	Calculation: Total Claims Paid / Total Payable Hours	Employer must make additional expenditures of \$.93 per Hour 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.

Claims Paid by Employer for SF Employees	SF Payable Hours	Average Hourly Expenditure	Compliance
\$120,000	25 Employees x 2064 Hrs. = 51,600 Hrs.	\$120,000 / 51,600 Hrs. = \$2.325 per Hr. (round to \$2.33)	\$2.33 does not meet the 2021 Large Employer rate of \$3.18.
Do NOT count employee's share of premium (subtract it if needed).	Include paid vacation hours, sick time, etc. (172 Hr./mo maximum)	Calculation: Total Claims Paid / Total Payable Hours	Employer must make additional expenditures of \$.85 per Hours Payable to each employees covered by the HCSO





# Self-Funded Calculation Example

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

Claims paid for all employees enrolled nationwide	Use <u>2064</u> annual payable hours (172/mo)	Average Hourly Expenditure	Compliance
\$3,500,000 claims paid for 950 employees enrolled	950 employees enrolled x 2064 Hrs. = 1,960,800 Hrs.	\$3,500,000 / 1,960,800 Hrs. = \$1.78 per Hr.	\$1.78 does not meet the 2021 Large Employer rate of \$3.18.
*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 \$1.40 per Hour Payable to each employees covered by the HCSO



# Account for Other Health Care Expenditures

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

*Example:* Self-funded medical plan is valued at \$2.25/hr.

Anna is enrolled only in the medical plan.	Beth is enrolled in the medical plan and the dental plan valued at \$.12/hr	Carlos is enrolled in medical, dental, and got HSA contributions of \$.85/hr.
$\$3.18 - \$2.25 = \text{hourly shortfall of } \$.93 \text{ for Anna}$	$\$3.18 - \$2.25 - \$.12 = \text{hourly shortfall of } \$.81 \text{ for Beth}$	$\$3.18 - \$2.25 - \$.12 - \$.85 = \text{no shortfall for Carlos (employer exceeded the spending requirements)}$



# Self-Funded Insurance Plan Top-offs

- If average expenditures fall short of the required amount for 2021, the employer must make “top-off” payments by **February 28, 2022.**

- [See HCSO Rule 5.10\(3\):](#)

*If an employer with a self-funded/self-insured plan fails to make the required Health Care Expenditures during a calendar year, that employer shall have until the last day of February of the following calendar year to “top off” the expenditures and find another way to spend the required amount on behalf of the Covered Employees.*



# 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 employees' payable hours 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 2021 was **\$2.25/Hr.**
- This is **\$0.93/Hr. less than the \$3.18/Hr. expenditure requirement** for Large Employers in 2021.



# Calculating the Top-off: Example A

(employer calculated a \$.93 shortfall)

	Payable Hrs in 2021 per Employee	Shortfall	Employees in SF covered by the HCSO	Total Due
Part time	86 hrs x 12 mo. = 1032	\$0.93/hr x 1032 hrs = \$959.76/person	5	5 x \$959.76 = \$4,798.80
Full time	172 hrs x 12 mo = 2064	\$0.93/hr x 2064 hrs = \$1,919.52/person	10	10 x \$1,919.52 = \$19,195.20
				<b>\$23,994 in top off payments</b>



# 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 expenditures made for 2022.
  - OLSE does not manage the SF City Option. Visit <http://sfcityoption.org>.



# Top-offs with refunds

- Prior example: at the end of 2021 Acme Co. calculated a \$.93/hr shortfall and made top-offs accordingly by Feb 28, 2022.
- However, in May 2022, Acme receives a refund from its carrier. Acme recalculates the value of its self-funded plan and determines the true shortfall was \$1.03/hr.
- Employer must now pay the remaining \$.10/hr shortfall within 30d.

Feb 2022 topoff	June 2022 topoff
Part time: \$0.93/hr x 1032 hrs = \$959.76/person x 5 PTEs = \$4,798.8	Part time: \$.10/hr x 1032 hrs = \$103.20/person x 5 PTEs = \$516
Full time: \$0.93/hr x 2064 hrs = \$1,919.52/person x 10 FTEs = \$19,195.20	Full time: \$.10/hr x 2064 hrs = \$206.40/person x 10 FTEs = \$2,064
<b>\$23,994.00 in top offs made to 15 e'ees</b>	<b>\$2,580 in additional top offs made to 15 e'ees</b>





# Top-off payments are not part of the value of the plan!

Example: Employer calculates the value of the plan at \$2.73/hr → in order to comply, employer must make top-offs of \$.45/hr. Only the combination gets employer to the required \$3.18. But the value of the plan itself is only \$2.73.



# Covid-19: Employer impacts

- In the context of the HCSO, Covid impacted Covered Employers in three main ways:
  - (1) Workforce reductions;
  - (2) Spikes in health care costs;
  - (3) Increasingly remote workforce.
- **Nothing changed** about the HCSO's spending requirement.



# Covid-19: Workforce reductions

- Remember, a Covered Employee is someone who works an average of 8h/wk in San Francisco during a calendar quarter.
- All calculations on health care expenditures are based on “hours payable,” defined as:
  - “...both the hours for which a person is paid wages for work performed within San Francisco and the hours for which a person is entitled to be paid wages, including, but not limited to, paid vacation hours, paid time off, and paid sick leave hours, but not exceeding 172 hours in a single month. Note that Hours Payable is the figure used to calculate the expenditure required for each Covered Employee, but “[hours worked](#)” is used to determine whether an employee is covered by the HCSO.”



# Workforce reduction: calculation example

Acme Corp: From Jan – March 2021, 350 employees were enrolled in the self-funded plan. 300 are full-time and 50 are part-time employees working 20 hrs/week. In April, Acme does a large round of layoffs. From April thru December, Acme only had 100 full-time employees enrolled in the self-funded plan, and zero part-time employees enrolled.

Acme calculates the value of the self-funded plan in February 2022 and determines it has a shortfall of \$.54/hr. How does Acme determine who how much to top off its current and former employees?



# Workforce Reduction Example

## Top-off Calculation: \$.54/hr shortfall

<p><b>Group A:</b> 5 FT e'ees who worked all year</p>	<p>172h/mo x 12 mos = 2,064 payable hours per person</p>	<p>2,064 hrs x \$.54 = \$1,114.56 shortfall to each FT e'ee who worked all year</p>	<p>\$1,114.56/person x 5 people = \$5,572.80 additional health care expenditures paid to Group A in Feb 2022</p>
<p><b>Group B:</b> 5 FT e'ees who worked Jan – March, laid off in April</p>	<p>172h/ mo x 3 mos = 516 payable hours per person</p>	<p>516 hours x \$.54 = \$278.64 shortfall to each FT e'ee who was laid off in April</p>	<p>\$278.64/person x 5 people = \$1,393.20 additional health care expenditures paid to Group B in Feb 2022</p>
<p><b>Group C:</b> 5 PT e'ees who worked Jan – March, laid off in April</p>	<p>86h/mo x 3 mos = 258 payable hours per person</p>	<p>258 hours x \$.54 = \$139.32 shortfall paid to each PT e'ee who was laid off in April.</p>	<p>\$139.32/person x 5 people = \$696.60 additional health care expenditures paid to Group C in Feb 2022</p> <p><b>Total shortfall for all Covered Employees: \$5,572.80 + \$1,393.20 + \$696.60 = \$7,662.60 total top-off payments made</b></p>



# Remote work

- The definition of “Covered Employee” under the HCSO stems on where the work is performed. [note: legislative amendment from June 2021 has not gone into effect]
- If an employee previously worked at a job site in SF, but now works remotely from home, look at where the employee lives. If she lives in SF, she is still a Covered Employee. If she does not live in SF, she is no longer a Covered Employee.
- Conversely, if an employee previously worked at a job site outside SF, but now works remotely from home inside SF, she is now a Covered Employee even though she hadn’t been previously.
- If an employee is entitled to a top-off payment, but worked in SF part of the year and outside SF for part of the year, her toff is based on her *payable hours* only (payable hours is reflective of work performed in SF)

# Other requirements: recordkeeping

- Annual reporting—April of each year (was waived in 2019 + 2020, but not 2021)
- 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:

- Employer **must** inform employees the contribution has been made;
- Employees will need to fill out an SF MRA Enrollment Form before they can access the funds;
- Questions about the City Option should be directed to the City Option program, **not OLSE**.
  - Employer inquiries: (415) 615-4492; employerservices@sfcityoption.org



# 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 GOING FORWARD

- If you expect to have a shortfall in 2022, you can avoid a large payment in February 2023 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 2021, 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.



**Remember, all other provisions of HCSO still apply!!!**

- **Quarterly spending deadlines still apply to employees who are covered by the HCSO and are:**
  - Enrolled in fully-funded health plans;
  - Choose not to enroll in your company's insurance;
  - Are not eligible for your company's insurance.

# HCSO Resources

- [Sign up](#) for OLSE updates (note: several new labor laws have been passed during COVID)
- OLSE HCSO [Website](#)
  - Self-funded instructions & examples
  - Rules & Administrative Guidance
  - Sample letters to employees
- Email us: [HCSO@sfgov.org](mailto:HCSO@sfgov.org)
- Call us: (415) 554-7892 (due to Covid, you need to leave a message, and your call will be returned by the next business day)

