



# **Excepted Benefits HRAs and HCSO Compliance**

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**Office of Labor Standards  
Enforcement (OLSE)**



# Presenters

- Bernice Casey, Compliance Officer
- Ellen Love, Administrative Analyst
- Jorge Saavedra, Compliance Officer



# Questions

Please email questions during the webinar to [hcsos@sfgov.org](mailto:hcsos@sfgov.org).

# Agenda

1. Health Care Security Ordinance (HCSO)  
Overview
2. Guidance on Excepted Benefits HRAs for 2014
3. HRA “True-Up” Opportunity for 2014
4. HCSO Amendment
5. Q&A



# **Part 1: Health Care Security Ordinance (HCSO) Overview**

# Office of Labor Standards Enforcement (OLSE)

- OLSE enforces 10 San Francisco labor laws, including the HCSO.
- Employers are required to cooperate with OLSE investigations.
- Upon determining that an employer violated the HCSO, OLSE requires corrective actions and imposes administrative penalties.

# Employers Covered by the HCSO

- Businesses and nonprofits required to obtain a business registration certificate in San Francisco
- Minimum size threshold based on total number of employees in ALL locations
  - For-profit employers: 20+ persons perform work per quarter
  - Nonprofit employers: 50+ persons perform work per quarter

# Employer Obligations Under the HCSO

1. Employer Spending Requirement (ESR): Make Health Care Expenditures on behalf of “covered employees”
2. Maintain records sufficient to prove compliance with ESR
3. Post official OLSE Notice in all workplaces
  - Download notice from the OLSE website
4. Report health care expenditures to OLSE
  - Annual Reporting Form available online in March; due April 30



# Employees Covered by the HCSO

- Employees employed for at least 90 calendar days and work at least 8 hours per week in San Francisco
- NOT COVERED:
  - Managers or supervisors earning \$90,745(\$43.63/hour) or more per year. For 2014 this rate was \$88,212.
  - Eligible for Medicare or TRICARE
  - Covered by the Health Care Accountability Ordinance (HCAO)
  - Voluntarily signed official OLSE waiver form and receive health benefits through another employer

# Employer Spending Requirement

- Minimum health care expenditure is calculated by multiplying total hours payable to the Covered Employee by the health care expenditure rate

	2013	2014	2015
100+ Employees	\$2.33/hr	\$2.44/hr	\$2.48/hr
20-99 Employees	\$1.55/hr	\$1.63/hr	\$1.65/hr

- Health care expenditures must be made regularly, no later than 30 days after the end of the preceding quarter

# Making Health Care Expenditures

Employers may choose how to make expenditures for “Health Care Services” on behalf of their Covered Employees (and/or their dependents). Some common options include:

- Medical insurance
- Dental insurance
- Vision insurance
- Contributions to the City Option
- Contributions to Health Savings Accounts
- Contributions to revocable reimbursement programs (HRAs)



## **Part 2: Guidance on Excepted Benefits HRAs for 2014**

# Affordable Care Act (ACA) & HRAs

- Health Reimbursement Accounts (HRAs)
  - Employer-funded accounts that reimburse employees for health care costs.
- Federal HRA guidance changed as of Jan. 1, 2014
  - No new stand-alone medical HRA contributions, under market reforms prohibiting out-of-pocket annual max
  - Contributions to integrated HRAs acceptable
  - See [IRS Notice 2013-54](#) (September 14, 2013)

# Prior Guidance on Reimbursement Programs

- Prior to 2014, OLSE affirmed that reimbursement plan contributions counted toward HCSO spending when the employer reimbursed all IRS eligible medical expenses.

# Excepted Benefits HRAs

- With changes to federal law, employers began asking about “*Excepted Benefits HRAs.*”
- The new proposed “Excepted Benefits HRAs” reimburse a narrow set of expenses.
- The City reviewed changing federal policy landscape and issued new guidance at the end of 2013.

# Excepted Benefits

- What are Excepted Benefits?
  - *Benefits “excepted” from market reforms of the ACA*
  - *Excepted benefits that are also Health Care Services (under HCSO)*
    - dental benefits limited to treatment of the mouth;
    - vision benefits limited to treatment of the eye;
    - medical indemnity insurance;
    - long-term, nursing home, home health, or community-based care; and
    - coverage limited to a specific disease or illness.



# Existing provisions of the HCSO

- Must continue to meet previous guidance:
  - Funds available for 24 months (during employment);
  - Funds available for 90 days from separation;
  - Notices to employees within 15 days of contributions;
  - Separation notice within 3 days of separation; and
  - Expenditures must be “reasonably calculated to benefit the employee.”

# New Guidance on Excepted Benefits HRAs

- OLSE affirmed expenditures would be “reasonably calculated” if:
  - The employer reimburses for all Excepted Benefits that are:
    - Health Care Expenditures
    - Can be reimbursed by an HRA (pursuant to federal law)
  - The employee has a 90 day grace period to submit claims

# New Guidance on Excepted Benefits HRAs

- OLSE affirmed expenditure would be “reasonably calculated” if:
  - The employer makes allocations for no more than than the Required Expenditures for an average of 20 hrs/wk.
    - Large Employer: \$2,537.60
    - Medium Sized Employer: \$1,695.20
  - The employer contributes more than the amount required for 20 hours / week, and the employer actually reimburses the full amount during the calendar year.



# **Part 3: HRA True-Up Opportunity for 2014**

# EB HRA True-up Opportunity

- Did you contribute for more than an average of 20 hours/week in 2014 for any employee?
- Are there remaining funds in the account?

# EB HRA True-up Opportunity

- Make Health Care Expenditures
  - For each individual with allocations greater than the required expenditures for an average of 20 hrs/week
    - Large Employer: \$2,537.60
    - Medium Sized Employer: \$1,695.20
  - Make health care expenditures with the unused allocations above 20 hrs/wk
  - Deadline: **January 30, 2015**

# EB HRA True-up Opportunity

Example:

- A medium-sized employer allocated 30 hr/per week :

$$\$1.63 \text{ rate} \times 30 \text{ hrs} \times 52 \text{ weeks} = \$2,542.80$$

- Reimbursed only \$500
- The employer must spend the amount contributed for 10 hours (hours > 20 /week)

$$10 \text{ hrs} \times \$1.63 \times 52 \text{ weeks} = \$847.60$$

# EB HRA True-up Opportunity

- How to make valid Health Care Expenditures
  - True up by spending money on Health Care Services. Some include:
    - Medical insurance
    - Dental insurance
    - Vision insurance
    - City Option
    - HSA
  - You still need to make the full amount of the required Health Care Expenditures for 2015 in addition to any “true up” expenditures for 2014.



## D. Excepted Benefits HRA Reporting

- Employers who used an EB HRA in 2014 and contributed for more than 20 hours per week are required to complete an addendum to the HCSO Annual Reporting Form.
- Available in March 2015.
- Due on April 30 2015.
- Report on each individual employee for whom you contributed an amount in excess of 20 hours per week.



# Part 4: HCSO Amendment

## A. Revocable & Irrevocable Expenditures

- Irrevocable
  - Never revert to employer
  - Actually paid – **not just accrual on the books**
- Revocable Expenditures:
  - As in the past, expenditures must be available for 24 months, employees must be notified, must be *“reasonably calculated to benefit the employee”*
  - New info on notifying employees
  - OLSE assessment of “reasonably calculated”

## A. Revocable & Irrevocable Expenditures

- **Irrevocable Spending**

- 60% of expenditures for each employee for 2015
- 80% for 2016
- 100% for 2017 and beyond



## Part 5: Q&A



# **HCSO Team Contact Information**

Office of Labor Standards Enforcement

[hcsosf@sfgov.org](mailto:hcsosf@sfgov.org)

(415) 554-7892

[www.sfgov.org/olse/hcso](http://www.sfgov.org/olse/hcso)