Health Care Security Ordinance: Self-funded Health Plan Calculations

Office of Labor Standards Enforcement (OLSE)
January 31, 2023

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Agenda

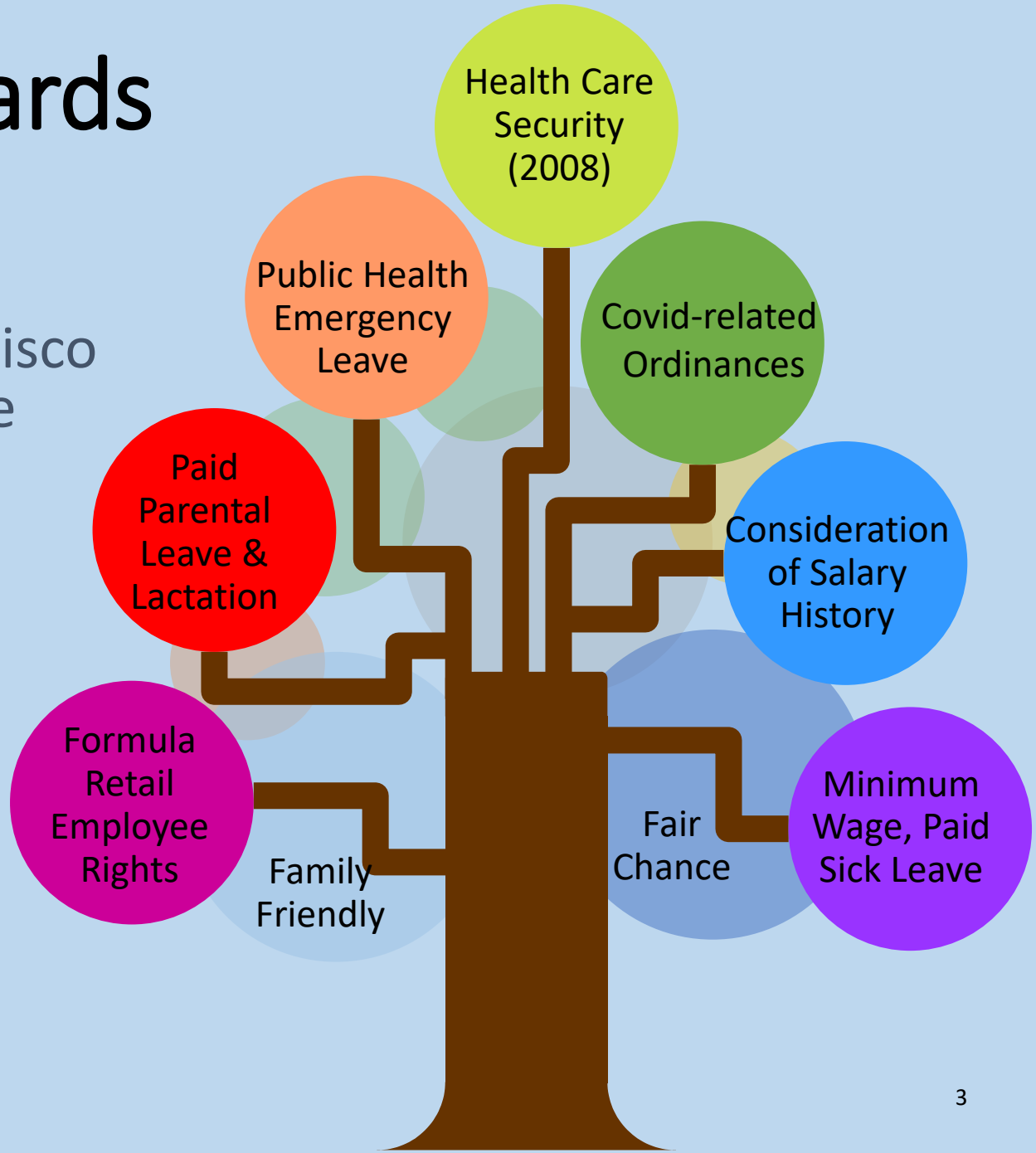
1. HCSO Background
2. Rules for Self-Funded Plans
3. Calculating Average Expenditures for 2022
4. Making Top-off Payments
5. Best Practices

Office of Labor Standards Enforcement (OLSE)

OLSE enforces an array of San Francisco labor ordinances, including Citywide laws and laws specifically for City contractors, lessees, and grantees.

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

https://sf.gov/olse/



HCSO Background

- The Health Care Security Ordinance (HCSO) requires covered employers to make health care expenditures for covered employees at a specific rate.
- **2022 Large Employer rate was $3.30/hour.** (For a full-time employee, this equates to $567.60/mo, $1,702.80/Q, $6,811.20/yr).
- Large employers are those with 100 or more employees worldwide.
- HCSO Rules changed in 2017 with respect to how OLSE evaluates expenditures under self-funded insurance plans. The new Rules prohibited Cobra rates from being used as a stand-in for the employer spend.
- **Full text of HCSO Rules available at** Understanding the Health Care Security Ordinance | San Francisco (sf.gov)

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.

QUESTIONS: EMAIL hcso@sfgov.org

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.

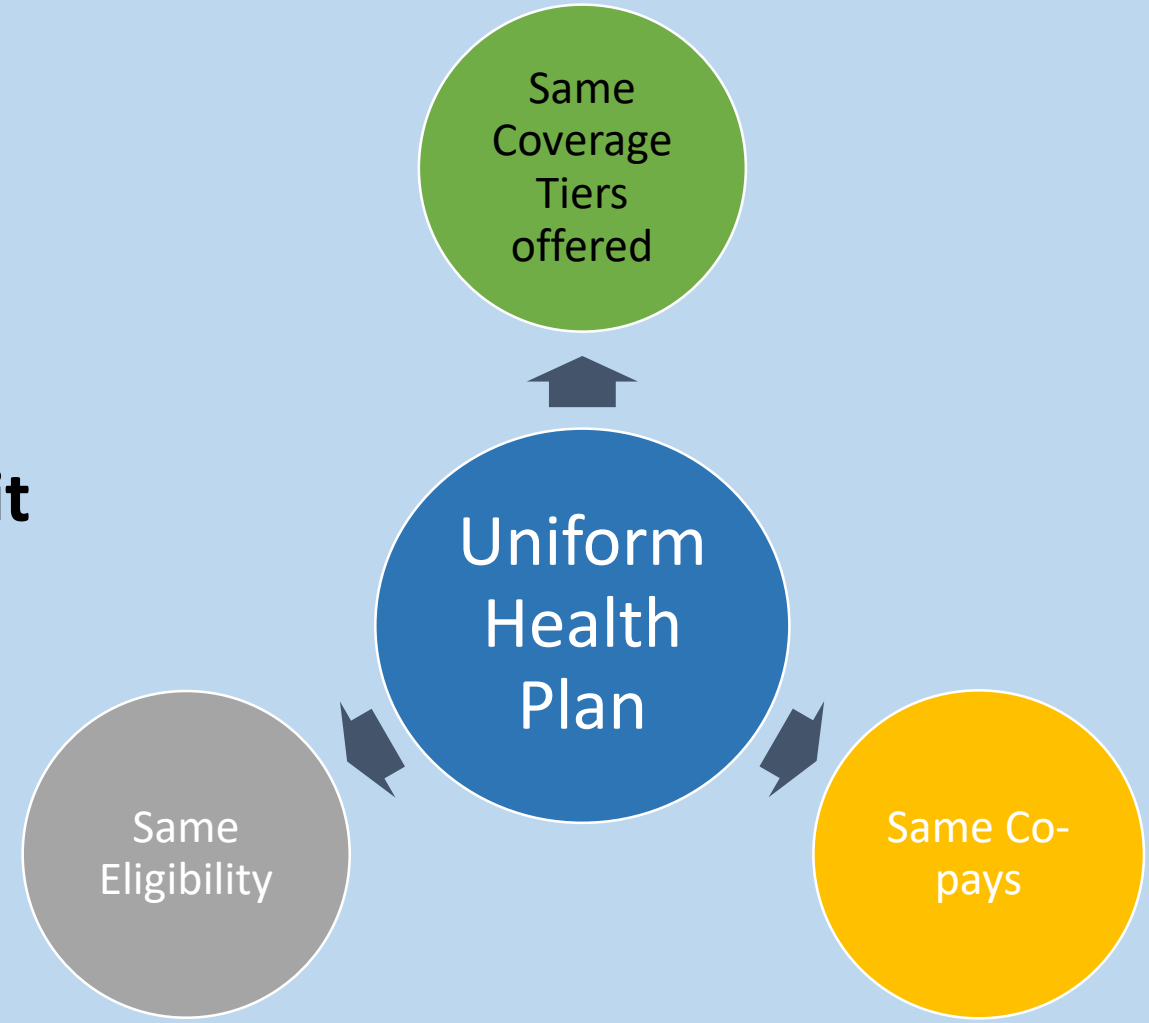
Self-Funded Insurance Plan Calculations

HCSO Rule 5.9

- **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?**

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**.**
- **Uniform health plan = uniform benefit design.**
- Employers typically offer a “menu” of different plan offerings. Each “menu item” has a different cost.



Uniform Health Plans: Example

- Expenditures may only be averaged when the benefit design is the same.
- Different plans must be averaged separately. Examples:
  - HMO plan cannot be averaged with PPO plan.
  - Aetna plan cannot be averaged with Cigna plan.
  - Kaiser Bronze cannot be averaged with Kaiser Silver.

Health Plan Menu

Kaiser HMO Silver:

- Costs e'er $3.25/hr → does not comply w/ HCSO

Kaiser HMO Bronze:

- Costs e'er $2.95/hr → does not comply w/ HCSO)

Blue Shield PPO plan:

- Costs e'er $3.63/hr → complies with HCSO

Anthem PPO plan:

- Costs e'er $3.94/hr → complies w/ HCSO

Average Expenditure Calculation: Step 1

Plan Cost (claims, premiums) *(for that Plan)*

−

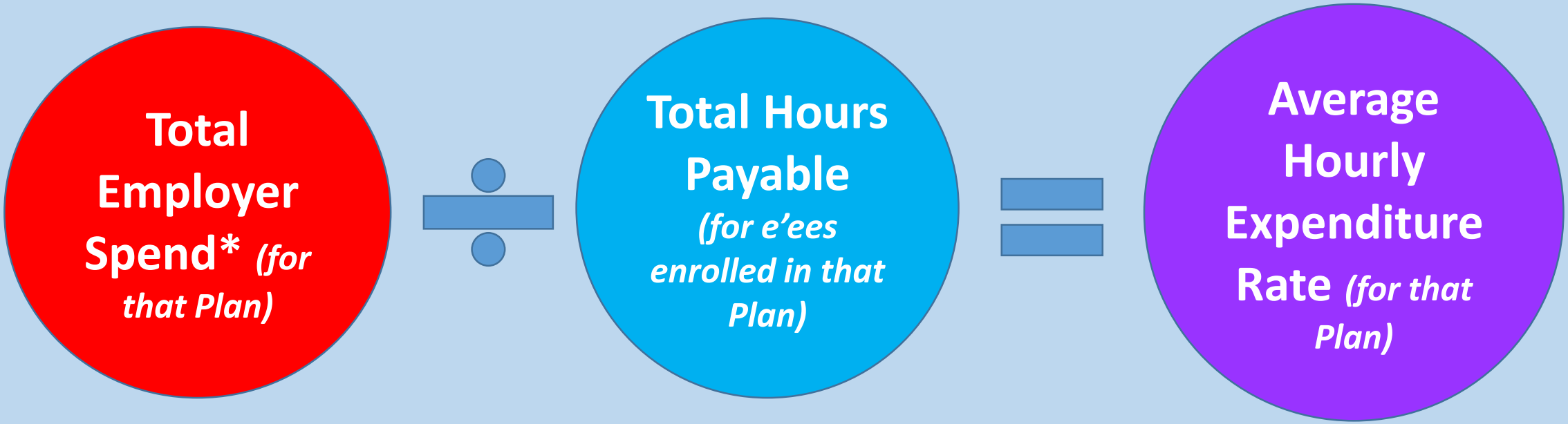
Employee share of cost *(for e'ees enrolled in that Plan)*

=

Total Employer Spend *(for that Plan)*

***Employer spending does NOT include premium contributions from employees! You MUST subtract employee share of cost from amounts spent by employer. Note that different tiers likely have different costs for employees.**

Average Expenditure Calculation: Step 2



***Employer cost does NOT include carrier refunds to employers!**

Calculation Notes – Employer Costs

- Count only claims **paid** in 2022 (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.

Calculation Notes—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 (it’s not “money spent” if you end up getting it back!).
  - 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 after it knows the refund amount.

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. So, 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 2023, when employer assesses the cost of its 2022 plan, it must determine whether the 2022 average hourly expenditures met or exceeded the 2022 expenditure rate.

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
$1,700,000	300 FT employees (x2064 hrs) and 50 PT employees (x1032 hrs) = 670,800 hrs	$1,700,000 / 670,800 Hrs. = $2.534 per Hr. (round to $2.53)	$2.53 per hour falls short of the 2022 Large Employer rate of $3.30.
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 $.77 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
$155,000	25 Employees x 2064 Hrs. = 51,600 Hrs.	$155,000 / 51,600 Hrs. = $3.003 per Hr. (round to $3.00)	$3.00 does not meet the 2022 Large Employer rate of $3.30.
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 $.30 per Hour 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 2064 annual payable hours (172/mo)	Average Hourly Expenditure	Compliance
$4,100,000 claims paid for 950 employees enrolled	950 employees enrolled x 2064 Hrs. = 1,960,800 Hrs.	$4,100,000 / 1,960,800 Hrs. = $2.09 per Hr.	$2.09 does not meet the 2022 Large Employer rate of $3.30.
*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 $1.21 per Hour Payable to each employees covered by the HCSO

Next Step: Account for Other Health Care Expenditures by Employer

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

Example: Self-funded medical plan is valued at $2.94/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.
$3.30 - $2.94 = ***hourly shortfall of $.36 for Anna***	$3.30 - $2.94 - $.12 = ***hourly shortfall of $.24 for Beth***	$3.30 - $2.94 - $.12 - $.85 = ***no shortfall for Carlos*** (employer exceeded the spending requirements)

QUESTIONS SO FAR?

Self-Funded Insurance Plan Top-offs

- If average expenditures fall short of the required amount for 2022, the employer must make "top-off" payments by **February 28, 2023.**

- 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 (meaning—working 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 2022 was **$2.94/Hr.**

- This is **$0.36/Hr. less than the $3.30/Hr. expenditure requirement** for Large Employers in 2022.

Calculating the Top-off: Example A

(employer calculated a $.36/hr shortfall)

	Payable Hrs in 2022 per Employee	Shortfall/person	Employees in SF covered by the HCSO	Total Top-Off Payment Due
Part time	86 hrs x 12 mo. = 1032	$0.36/hr x 1032 hrs = $371.52/person	5	5 x $371.52 = $1,857.60
Full time	172 hrs x 12 mo = 2064	$0.36/hr x 2064 hrs = $743.04/person	10	10 x $743.04 = $7,430.40
				$9,288.00 in top off payments owed to SF workforce

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 2022, Acme Co. calculated a $.36/hr shortfall and made top-offs accordingly by Feb 28, 2023.
- However, in May 2023, Acme receives a refund from its carrier. Acme recalculates the value of its self-funded plan and determines the true shortfall was $.89/hr.
- Employer must now pay the remaining $.53/hr shortfall within 30d.

Feb 2023 topoff	June 2023 topoff
Part time: $0.36/hr x 1032 hrs = $371.52/person x 5 PTEs = $1,857.60	Part time: $.53/hr x 1032 hrs = $546.96/person x 5 PTEs = $2,734.80
Full time: $0.36/hr x 2064 hrs = $743.04/person x 10 FTEs = $7,430.40	Full time: $.53/hr x 2064 hrs = $1,093.92/person x 10 FTEs = $10,939.20
$9,288.00 in top offs made to 15 e'ees	**$13,674.00 in additional top offs made to same 15 e'ees**

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 $.57/hr. Only the combination of the Plan with the timely top-off gets employer to the $3.30/hr required for compliance. But the value of the plan itself is only $2.73.

Reminder: remote work

- The definition of "Covered Employee" under the HCSO stems on *where the work is performed*.
- 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 topoff 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
- 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;
- 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 top-off 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 large shortfall at the end of 2023, you can avoid a large payment in February 2024 by making top-off payments throughout the year.
- This is not required, but can help the employer spread out payments over time rather than being surprised at the end of the year.
- If you had a large shortfall for 2022, 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 (note: San Francisco passes new labor laws every year!)**
- **OLSE HCSO Website**
  - Self-funded instructions & examples
  - Rules & Administrative Guidance
  - Sample letters to employees
- **Email us: HCSO@sfgov.org**
- **Call us: (415) 554-7892**
- **Remember: if you have compliance problems, we can give you advice.**

QUESTIONS?