



San Francisco: OLSE Releases Model Notices and FAQs on HCSO

LEGISLATIVE BRIEF

January 16, 2012

On December 23, 2011, San Francisco's Office of Labor Standards Enforcement (OLSE) released FAQs which focus on the recently enacted amendment to Healthy San Francisco (HCSO) creating the partial non-forfeitability of employer contributions to expense reimbursement plans (HRAs). For details regarding this Amendment, please refer to San Francisco's Health Care Security Ordinance (HCSO) website and our benefit trends dated November 30, 2011.

The Notices in Brief

Effective January 1, 2012, the HCSO Amendment requires San Francisco employers to provide three new notices:

1. **Reimbursement Account Contribution Summary.** Due within 15 days of the date the contribution is made;
2. **Separation Notice.** Due within 3 days of termination of employment; and,
3. **Official 2012 Notice.** Due now!

Discussion

Sample Notices. Although the December 23, 2011 FAQs refer to the three notices as "sample notices", the Official 2012 Notice must be verbatim. The recommendation is that employers use the Contribution Summary Notice and the Separation Notice as written, if at all possible.

Official 2012 Notice. The Official 2012 Notice must be placed in every workplace or jobsite where any covered employee works.

- **Verbatim.** The FAQs make it clear that any variation in the text of this Notice will cause it to fail the requirement of the law.
- **Foreign Languages.** The OLSE rule requires the Official 2012 Notice to include English, Spanish and Chinese. If more than 5% of the workers at a workplace or jobsite speak any other language, the employer is responsible for translating and posting the Notice in that language. OLSE graciously provides versions in Tagalog, Russian, and Vietnamese.
- **Penalties.** The OLSE may impose an administrative penalty of \$25 per day for each affected workplace or jobsite without a Notice posted.

Contribution Summaries. As we have stated, OLSE has provided a sample “Contribution Summary” Notice and mandated that it must be given to covered employees within 15 days of the date the employer contribution is made, but it has not dictated how the Notice is to be given. It appears that employers can use any method (including electronic delivery) as long as the employer can provide records which demonstrate compliance. It’s worth noting that a covered employer is subject to a \$500 per quarter penalty for failing to provide, maintain, or retain accurate records.

Health Reimbursement Accounts. The FAQs provide additional guidance on what OLSE considers a reimbursement account, what to do about 2011 contributions, and how to apply claims:

- **Reimbursement Account.** According to FAQ-16, a health reimbursement account is one having substantially the same purpose or effect as a Health Savings Account (HSA) defined under Internal Revenue Code IRC Section 223. It also can be an IRC Section 223 HSA.
- **Contributions.** FAQ-25 and FAQ-26 state that contributions to a reimbursement account will qualify as a health care expenditure under the HCSO as long as the unused balance in the account at the end of 2011 becomes available in 2012 and beyond for 24 months from the date of the original contributions made prior to 2011.
- **Claims.** FAQ-21 requires that any claims disbursement made must be debited against the oldest employer contribution amounts still available. For example, a covered employee’s submission for reimbursement in the first quarter of 2012 would be applied to the oldest 2010 or 2011 contribution amount still available.

Action Plan

Covered employers must do the following:

1. Assure that the Official 2012 Notice has been posted in all locations or job sites where an HCSO qualifying individual works. To avoid penalties, employers must get the posters in place, in the right language(s) as soon as possible;
2. Verify account amounts and payment procedures with their accounting staff or third party administrator;
3. Establish a written procedure regarding the distribution of Contribution Notices and a separate procedure for Notices of Separation from employment; and,
4. Monitor all HCSO-related OLSE announcements/pronouncements by linking to [San Francisco’s Health Care Security Ordinance \(HCSO\) website](#).

Copyright © 2012 Kutak Rock LLP • All Rights Reserved. Reprint with permission only.
This legislative update is published as an information source for our clients and colleagues.
It is general in its nature and is no substitute for legal advice or opinion in any particular case.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.