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Changes to the San Francisco Health Care Security Ordinance Require Immediate Action

Recent amendments to the San Francisco Health Care Security Ordinance (“HCSO”) change the administrative requirements for health reimbursement accounts and impose additional notice and reporting requirements. These amendments are effective **January 1, 2012**.

Who is Covered. An employer is covered by the HCSO if it (i) employs 20 or more employees, (ii) does business within the City and County of San Francisco, and (iii) is required to maintain a San Francisco business registration certificate.

What is Required. The HCSO requires covered employers to spend a minimum amount of money each quarter on health care expenditures for employees covered by the HCSO. The health care expenditure rate varies by the business size based on the number of company-wide employees.

Satisfying Requirements. One way to satisfy this obligation is by making contributions to a health reimbursement account. Payment towards group health benefits also will satisfy this coverage. Other mechanisms are available.

Health Reimbursement Accounts. Beginning in 2012, covered employers that satisfy the HCSO by making contributions to a health reimbursement account must:

- Roll over any positive account balance as of December 31, 2011 to January 1, 2012;
- Allow contributions to remain available for at least 24 months from the date the contribution is made;
- Provide a written account summary to covered employees no later than 15 days after making a contribution;
- Annually report the terms of the account (including which expenses are eligible for reimbursement) to the Office of Labor Standards and Enforcement (“OLSE”);
- Allow covered employees who terminate employment with a positive account balance to submit claims for reimbursement for at least 90 days from the date of the termination; and
- Notify covered employees who terminate employment of their positive account balance and the date the balance expires within 3 days of termination.

Notice and Reporting Requirements. The amendment also requires covered employers to:

- Post notices published by OLSE that describe the HCSO at each workplace or jobsite where any covered employee works;
- Make health care expenditures (e.g., contributions to the health reimbursement account) within 35 days of the end of each quarter. Covered employers that fail to make timely expenditures may face a penalty of up to one-and-one half times the total missed expenditures, not to exceed \$100 for each covered employee for each missed quarter; and
- Annually report to OLSE any surcharges the covered employer charges its customers to cover the costs of health care expenditures. If the surcharges are greater than the amount spent on health care, the covered employer must provide the amount of the difference to its covered employees in the form of a health care expenditure.

Action Items. Covered employers who satisfy the HCSO by making contributions to a health reimbursement account will need to review and amend their health reimbursement accounts no later than **December 31, 2011** to ensure that: (i) reimbursements of eligible health care expenses from each contribution are permitted for at least 24 months, (ii) participants may continue to receive reimbursements from the account at least 90 days following termination of employment, and (iii) any positive account balance as of December 31, 2011 will roll over to January 1, 2012.

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