



Retail Detail

San Francisco Amends Its Health Care Law to Phase out HRAs

By Kathleen Cahill Slaughter and Joshua M. Henderson

On *February 10, 2014*, we reported that the City of San Francisco issued additional guidance authorizing retailers to satisfy the San Francisco Health Care Security Ordinance's (the "Ordinance") health care spending requirement for up to 20 hours per week per covered employee by offering stand-alone Health Reimbursement Accounts ("HRA") that limit reimbursements to specified benefits such as dental and vision benefits. This design would make the HRA an "excepted benefit." "Excepted benefits" are not subject to the ACA, so employers may offer this limited type of HRA without violating the ACA. The Affordable Care Act ("ACA") generally prohibited the use of stand-alone Health Reimbursement Arrangements ("HRAs") that were not integrated with group health plan coverage because the ACA prohibits annual dollar limits for essential health benefits.

This summer, the City's Board of Supervisors has changed its mind regarding the use of HRAs. On June 17, 2014, the Board of Supervisors passed an amendment to the Ordinance, which will not preclude employers from using HRAs to comply with the required health care expenditure obligations under the Ordinance, but will gradually phase out HRAs beginning in 2015 and effectively eliminate their use by 2017. The amendment reverses guidance previously issued by the City allowing the use of HRAs to satisfy the requirements of the Ordinance.

The Amendment phases out revocable expenses based on the following timeline:

Year	Irrevocable Expenditures Minimum	Revocable Expenditures Maximum
2015	60%	40%
2016	80%	20%
2017	100%	0%

The amendment requires expenditures made by employers be "irrevocable" within a three-year period, with a phase out of revocable expenses counting towards the health care expenditure requirement. An "irrevocable" expenditure is any expenditure not retained by the employer and cannot, at any time, be recovered by or returned to the employer. A "revocable" expenditure is any expenditure that has been allocated for employee use but is retained by the employer or any amount paid to a trustee or third party but which may at some time be recovered by or returned to the employer. For 2015, employers can use their excepted benefit HRA to satisfy 40% of the required expenditures requirement for an employee covered by the Ordinance. However, because HRAs return unused funds to the employer at some point, these funds are considered revocable and will not be acceptable means of satisfying the Ordinance starting in 2017.

Direct Payments Still Available

Retailers may still comply with the Ordinance by (i) directly reimbursing participants for benefits that qualify as health care expenditures, or for insurance premiums paid for those benefits; or (ii) by paying into the City's Medical Reimbursement Accounts. Payments into MRAs, however, will not allow unused amounts to revert to the retailer.

An earlier publication regarding compliance with the Ordinance can be [found here](#).

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