Updated: October 21, 2013. These answers are subject to change as new information or regulatory guidance becomes available.

The Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA) or "Obamacare," is a federal statute signed into law by President Obama on March 23, 2010. Many provisions of the ACA are scheduled to go into effect on January 1, 2014. The OLSE is publishing this set of FAQs to address some of the most common questions we are receiving from San Francisco employers and employees regarding the ACA's impact on the San Francisco Health Care Security Ordinance.

QUESTIONS FROM EMPLOYERS

Q1: Is the HCSO Employer Spending Requirement scheduled to expire or go away when the ACA takes effect in 2014?

A1: No, the HCSO Employer Spending Requirement is not scheduled to expire or go away when federal health reform takes effect in 2014. The ACA does not preempt or regulate the HCSO, and Covered Employers will be required to continue meeting the HCSO Employer Spending Requirement for their Covered Employees in 2014.

Q2: Has the Affordable Care Act changed federal rules and requirements regarding the use of stand-alone Health Reimbursement Accounts (HRAs)?

A2: Yes, the Affordable Care Act has made significant changes to federal regulation and guidance regarding Health Reimbursement Accounts that may impact the permissibility of such contributions under federal law. Consult these federal resources and proper counsel when deciding whether such contributions comply with the ACA:

> Preamble to the Interim Final Rules Implementing PHS Act Section 2711 (75 FR 37188, at 37191) (June 28, 2010)
> https://webapps.dol.gov/federalregister/PdfDisplay.aspx?DocId=23983
>
> FAQs about Affordable Care Act Implementation Part XI (January 24, 2013)
> http://www.dol.gov/ebsa/faqs/faq-aca11.html
>
> IRS Notice 2013-54 (September 14, 2013)
> http://www.irs.gov/pub/irs-drop/n-13-54.pdf

The HCSO has not changed, and contributions to reimbursement programs, including HRAs, will continue to be valid health care expenditures for the purpose of meeting the HCSO's Employer Spending Requirement. Section 14.1(b)(7)(A) of the HCSO establishes that contributions to a health savings account "or to any other account having substantially the same purpose or effect" are among the list of valid health care expenditures.

Q3: If my business elects to no longer allocates funds to HRAs, what are my options to satisfy the HCSO's Employer Spending Requirement in 2014?

A3: The options available to your business for satisfying the HCSO's Employer Spending Requirement in 2014 and beyond remain the same.

The HCSO requires Covered Employers to make Health Care Expenditures to or on behalf of their covered employees each quarter. A Health Care Expenditure is any amount paid by a Covered Employer to its Covered Employees or to a third party on behalf of its Covered Employees for the purpose of providing health care services for Covered Employees or reimbursing the cost of such services for its Covered Employees.

Some examples of Health Care Expenditures that meet the requirements of the HCSO include:

- Payments to a third party to provide health care services for the Covered Employee, such as payments for health insurance or payments to a health care provider;
- Payments on behalf of the Covered Employee to the City Option;
- Contributions on behalf of the Covered Employee to a reimbursement program;
- Payments to the Covered Employee to reimburse the employee for costs incurred in the purchase of health care services; and,
- Costs incurred by the employer in the direct delivery of health care services for the Covered Employee.

Q4: If my business elects not to make HRA contributions commencing in 2014, what happens to existing HRA balances at the end of 2013?

A4: The HCSO establishes that, in order to constitute a valid health care expenditure, the full amount of an allocation to a revocable reimbursement program, such as an HRA, must remain available to an employee for twenty-four months from the date of the allocation. This provision will remain in effect and employers will be expected to meet this requirement with respect to any revocable reimbursement account allocations.

Consult the preceding list of federal resources and proper counsel when deciding how the administration of such accounts relates to the ACA.

Please note that the Internal Revenue Service (IRS) anticipates issuing additional guidance regarding how utilizing HRA funds may impact an individual's eligibility for federal subsidies through health care exchanges (such as Covered California). We will provide more information on this issue as it becomes available.

Q5: Will my business still be able to contribute to the "City Option" as a means of complying with the Employer Spending Requirement in 2014?

A5: Yes, your business will be able to contribute to the "City Option" as a means of complying with the Employer Spending Requirement in 2014.

Q6: How can I find out what new mandates the ACA places on my business?

A6: The IRS website provides an overview of the tax provisions of the ACA that affect employers:

http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions-for-Employers

Note that he ACA was scheduled to impose new requirements on employers effective January 1, 2014. These were to include new reporting requirements and "shared responsibility payments" for certain employers who failed to provide affordable health insurance to full-time employees.

However, on July 2, 2013, the U.S. Department of Treasury announced that employers will not be subject to these requirements **until 2015**.

For more information, see the Department's announcement.

Q7: What processes are under way to review the implementation of the ACA in San Francisco and examine how the ACA integrates with local policy?

A7: Mayor Ed Lee recently reconstituted the Universal Healthcare Council to "examine San Francisco's implementation of the Federal Affordable Care Act (ACA) and engage stakeholders in identifying necessary local policies to support the implementation process." Changes to the HCSO could occur in the future if the Board of Supervisors takes legislative action or the OLSE adopts new regulations.

QUESTIONS FROM EMPLOYEES

Q1: What is the Individual Mandate of the Affordable Care Act?

A1: Under The Affordable Care Act (ACA), starting in 2014, everyone must: 1) have minimum essential health coverage, 2) qualify for an exemption, or 3) pay a federal tax penalty.

Please note that receiving a health benefit from your employer does not necessarily meet the condition of having minimum essential health coverage. Please consult the following resources for more information:

- the Questions and Answers on the Individual Shared Responsibility Provision page maintained by the IRS, and
- the "Requirement to Buy Coverage under the ACA" flowchart from the Kaiser Family Foundation.

Q2: Where can I get more information about obtaining affordable health insurance for myself and/or my family?

A2: The ACA provides new opportunities to get high-quality, affordable health insurance.

For more information, please check the following resources:

- Covered California, the website for California's new health insurance exchange; and
- the Health Care Reform page maintained by the Healthy San Francisco program.

Q3: My employer currently offers an HRA. Will I be able to seek reimbursements through the HRA for my out-of-pocket health care expenses in 2014?

A3: The HCSO establishes that, in order to constitute a valid health care expenditure, the full amount of an allocation to a revocable reimbursement program, such as an HRA, must remain available to an employee for twenty-four months from the date of the allocation. This provision will remain in effect, and employers will be required to continue to make the funds available for the full twenty-four month period.

Please note that seeking reimbursements from your employer's HRA in 2014 may have federal tax implications. The IRS anticipates issuing additional guidance on the tax consequences of utilizing HRA funds, and we will provide more information on this issue as it becomes available.