

**San Francisco**: Some NATRPM members recently had the opportunity to listen to representatives from the San Francisco Office of Labor Standards Enforcement (OLSE) on the SF Health care Security Ordinance and the SF Paid Sick Leave Ordinance. What we learned:

**SF Proposition F (SF Paid Sick Leave Ordinance)**: was passed on November 7, 2006, effective Feb. 5, 2007, requiring all businesses to provide paid sick leave to their employees (full time, part time and temporary) for times when they are ill or injured or for medical care, treatment or diagnosis and to care for family members or designated persons. There is an exception for those covered by a collectively bargained agreement that expressly waives compliance. [San Francisco Administrative Code Chapter 12W.8, §2A.23] For every 30 hours worked, an employee accrues 1 hour of paid sick leave. For employees working for their employer on or before February 5, 2007, accruals started on that date. For new hires after February 5, 2007, paid sick leave begins to accrue 90 calendar days after the employee's first day of work. Small businesses with less than 10 employees only need to accrue up to 40 hours saved at any point in time. For other employers, the cap is 72 hours. These are point in time caps and not annual caps. We learned that some employers were unaware that they are required to post notice of employee rights in a location where employees can read it easily. In addition, records are important that document hours worked and accrued and used leave for a period of four years. OLSE will look! For more information, see HYPERLINK "http://www.sfgov.org/olse/pslo" <http://www.sfgov.org/olse/pslo> or call the paid sick leave hotline at (415) 554-6271.

**SF Health Care Security Ordinance (HCSO)**: was passed on July 18, 2006, but was amended on April 2, 2007 to its present version. The HCSO has two components: the SF Department of Public Health (DPH) is to create a health care access program (named Healthy San Francisco ["HSF"]), for uninsured residents and set up Medical Reimbursement Accounts for employee who are ineligible for HSF; and businesses are required to make minimum health care expenditures for the benefit of their covered employees (known as the Employer Spending Requirement ["ESR"]). The minimum expenditure is calculated based on the "hours paid" (which includes both hours worked and any paid time off) to the covered employees. The OLSE is responsible for enforcement of the ESR. [SF Admin Code Chapter 14]

**Update on Lawsuit**: In November of 2006, the Golden Gate Restaurant Association filed a lawsuit to block the ESR. On

December 26, 2007, the District Court found the law invalid; however, on December 27, 2007, the City and County of SF filed an appeal and motion for a stay pending the appeal with the Court of Appeals to allow the ESR to go into effect. On January 9, 2008, the Court of Appeals granted the motion for stay; thus, the ESR is now in effect. There was a hearing on the Appeal on April 17, 2008, but no decision has been issued by the Court of Appeals as of the date of this publication. OLSE is optimistic on its outcome.

**Points on ESR:** The spending requirement went into effect January 9, 2008 for employers with 50 or more employees and on April 1, 2008, it went into effect for employers with 20 – 49 employees. Regardless of where the employer is located, health care expenditures must be made for any employees who are covered by the law. To determine whether a business is covered, you look to the total number of employees that an employer has, even if the employees are not living or working in SF. For purposes of the expenditure requirement, however, you look calculate expenditures for covered employees: full, part-time or temporary employees who have been employed for at least 90 calendar days and performing at least 10 hours of work per week ( in 2009, it drops to 8 hours per week) within SF.

These are quarterly spending requirements, and expenditures must meet the minimum for each and every covered employee, not just collectively in total. The OLSE made it clear that where payments to some employees exceed the requirement, the excess cannot be attributed to other employees. Moreover, where the employer's out of pocket expense for an employee, for example, for the health insurance premium, is less than the required minimum expenditure, the excess or balance must be spent on other health care for that employee. There are two exceptions where averaging may be allowed: uniform health coverage plans and self-funded/self-insured plans. The OLSE allows the use of the COBRA equivalent rate in the averaging process. Remember that employee contributions do not count, even if made through a flexible benefit plan, so those expenditures must be subtracted before calculating any average expenditures. There is a voluntary waiver process for employees receiving health care from another employer, e.g., through another employer or through dependent coverage on a spouse's plan, for example.

OLSE will look to IRC §213 definition of health care expenditure and recommends that employers check out IRS Publication 502, *Medical and Dental Expenses*, to determine specifically what counts. We also learned that employer contributions to a Health Reimbursement Account (HRA) if funds are actually set aside or to a Health Spending

Account (HSA) will count toward the spending requirement. In the context of health and welfare contributions under a union agreement, contributions for the health portion can count, but not for the welfare portion, such as expenditures for disability or pension.

There is an annual reporting requirement. A sample form is available on the OLSE website, but original forms will be mailed to all registered businesses at the end of this 2008. OLSE will investigate and audit. Records are required to be kept for 4 years.

Expenditure rates and other critical information can be found at HYPERLINK "http://www.sfgov.org/olse/hcso" <http://www.sfgov.org/olse/hcso>. You can also email HYPERLINK "mailto:HCSO@sfgov.org" [HCSO@sfgov.org](mailto:HCSO@sfgov.org) or call (415) 554-7892.

On a final note, the OLSE has developed an Excel spreadsheet to assist employers in calculating the minimum health care expenditures required under the HCSO. Employers are welcome to download the spreadsheet from their website (the link is at the bottom of the "Overview" section at the above website). The OLSE strongly encourages you to review the Questions & Answers and Line-by-Line Instructions before using the spreadsheet.