

GENERAL SERVICES AGENCY
 OFFICE OF LABOR STANDARDS ENFORCEMENT
 PATRICK MULLIGAN, DIRECTOR

*D. Embler notified
 6/11/21 @ 3:40pm.*



[sent via certified mail and email to RLeiken@heritagesf.org]

*Notified Pam
 Kaufmann 4pm
 6/11/21.*

NOTICE OF POTENTIAL VIOLATION

June 11, 2021

Mary Elizabeth Linde
 Chief Executive Officer and Agent for Service of Process
 San Francisco Ladies' Protection and Relief Society d/b/a Heritage on the Marina
 3400 Laguna Street
 San Francisco, CA 94123

RE: San Francisco Ladies' Protection and Relief Society d/b/a Heritage on the Marina
 Notice of Potential Violation, San Francisco Health Care Security Ordinance, Case No. HCSO-1045

Dear Mary Elizabeth Linde:

I am writing to notify you that San Francisco Ladies' Protection and Relief Society d/b/a Heritage on the Marina ("Heritage on the Marina") may have failed to meet its legal obligations under the San Francisco Health Care Security Ordinance ("HCSO"- Chapter 14 of the San Francisco Administrative Code). Therefore, the San Francisco Office of Labor Standards Enforcement ("OLSE") is initiating the foregoing investigation for the period from April 1, 2018 to March 30, 2021 ("Audit Period").

Heritage on the Marina is hereby mandated to submit written responses to the enclosed questions by **Monday, July 12, 2021**. Heritage on the Marina has the right to respond to this notice (HCSO §14.4(a)), and is hereby offered the opportunity to demonstrate that it has complied with the requirements of the HCSO as summarized here.

HEALTH CARE EXPENDITURE REQUIREMENT

The HCSO requires all covered employers to make health care expenditures to or on behalf of their "Covered Employees," defined as those persons who qualify as employees entitled to the minimum wage, have been employed for at least 90 calendar days, work at least 8 hours per week in San Francisco, and are not otherwise exempt pursuant to HCSO §14.1(b)(2). These health care expenditures must meet or exceed the minimum expenditures required by the HCSO, which are calculated by multiplying the total number of "payable hours" for each covered employee during the quarter – which includes both hours for which a person is paid wages for work performed within San Francisco and hours for which a person is *entitled* to be paid wages, including, but not limited to, paid vacation hours, paid time off, and paid sick leave hours, but not exceeding 172 hours in a single month or 516 hours in a single quarter – by the applicable health care expenditure rate. These required *health* care expenditures must be made no later than 30 days after the end of the preceding quarter.

The applicable health care expenditure rate for large businesses (i.e. employers for which an average of 100 or more persons per week perform work for compensation during a quarter), was \$2.83 per hour in 2018, \$2.93 per hour in 2019, \$3.08 per hour in 2020, and is now \$3.18 per hour in 2021. The applicable health care expenditure rate for medium-size businesses (i.e. employers for which an average of 20 to 99 persons per week perform work for compensation during a quarter) was \$1.89 per hour in 2018, \$1.95 per hour in 2019, \$2.05 per hour in 2020, and is now \$2.12 per hour in 2021. For purposes of determining the size of the employer, OLSE will count all persons employed by a group of business entities which satisfies the definition of a “controlled group of corporations,” as defined by Sec. 1563(a) of the U.S. Internal Revenue Code. When making this determination OLSE will also include entities which are not corporations (Rule 2.3, 2.4).

OLSE enforces the obligations of covered employers under this Ordinance, including requiring restitution to employees where appropriate, and shall impose administrative penalties upon covered employers who fail to make required health care expenditures on behalf of their employees within five business days of the quarterly due date. Failure to make a required health care expenditure shall include making a purported expenditure that is determined by OLSE not to be reasonably calculated to benefit the employee. The amount of the penalty shall be up to one-and-one-half times the total expenditures that a covered employer failed to make, but in any event the total penalty for this violation shall not exceed \$100.00 for each employee for each quarter that the required expenditures were not made within five business days of the quarterly due date (HCSO § 14.4(e)(1)).

Covered Employers shall also provide information to the OLSE on an annual basis containing such information as the OLSE shall require (HCSO §14.3(c)). The HCSO Annual Reporting Form is due to the OLSE on April 30 of each year. The maximum penalty for the failure to submit the annual report is \$500.00 for each quarter that the violation occurs (HCSO §14.4(e)(2)).

The Ordinance also prohibits an employer from depriving or threatening to deprive any person of employment, taking or threatening to take any reprisal or retaliatory action against any person, or directly or indirectly intimidating, threatening, coercing, commanding, or influencing or attempting to intimidate, threaten, coerce, command, or influence any person because such person has cooperated or otherwise participated in an action to enforce, inquire about, or inform others about the requirements of this Ordinance. The maximum penalty for retaliation is \$100.00 per employee for each day the violation occurs (HCSO § 14.4(d),(e)(2); Rule 9).

For more information about Heritage on the Marina’s obligations under the HCSO, you can review the text of the Ordinance, the implementing rules, and the “Administrative Guidance” published by the OLSE. All of these resources are available from the OLSE website at www.sfgov.org/olse/hcso.

INVESTIGATION AND ENFORCEMENT

OLSE has the authority to conduct investigations and shall enforce the obligation of covered employers to satisfy the HCSO’s employer spending requirement (HCSO § 14.3(a); Rule 8). All covered employers shall cooperate fully with OLSE in connection with any investigation of an alleged violation of this Ordinance or with any audit or inspection conducted by OLSE (Rule 7.4).

Covered employers shall keep, or cause to be kept, for a period of at least four years from the covered employees’ dates of employment, records sufficient to establish compliance with the health care expenditure requirement, including, as applicable, records of health care expenditures made, calculations of health care expenditures required under this Ordinance for each covered employee, and proof documenting that such expenditures were made at least quarterly each year (Rule (7.2(a)(iii))). All records necessary to establish compliance with the Employer Spending Requirements of the HCSO, including each employee’s address and telephone number, shall be made available by covered employers to OLSE (Rule 7.2(c)). Where an employer

does not provide adequate records to demonstrate its compliance with the HCSO, OLSE shall presume that the employer violated the HCSO (Rule 7.2(c)). **Heritage on the Marina's response to this letter is its opportunity to demonstrate the company's compliance with the HCSO.**

In accordance with the aforementioned duties and authorities, Heritage on the Marina is hereby mandated to submit written responses to the enclosed questions by July 12, 2021. Heritage on the Marina is invited to provide any other evidence of its compliance with the HCSO.

When a Covered Employer is found to be in violation of the HCSO, OLSE will order the employer to pay restitution to employees up to the full amount of unmade health care expenditures, and may order the employer to pay 10% interest per annum and take other corrective actions as needed. Covered employers who fail to make the full required health care expenditures on behalf of their employees within five business days of the quarterly due date shall also be assessed a penalty of one-and-one-half times the total expenditures the employer failed to make, with a maximum of \$100.00 per employee per quarter (HCSO § 14.4(e)(1)) for this violation. The OLSE will also impose administrative penalties upon employers who fail to cooperate with the OLSE or otherwise impede the OLSE's ability to conduct an audit or investigation. The penalty for failing to provide access to records is \$25 per day for each worker whose records are at issue for each day that the violation occurs (Rule 9). OLSE and/or other City agencies may take other actions as necessary to collect unpaid amounts from employers for HCSO violations, including but not limited to revocation of licenses and permits, and referral to the City's Bureau of Delinquent Revenue.

CURRENT AND FUTURE COMPLIANCE

If you are not currently making the required Health Care Expenditures for all of your Covered Employees, you must immediately come into compliance for the current calendar quarter, and for all future quarters. Failure to do so may result in penalties. The deadline for making the health care expenditures for the second quarter of 2021 is July 30, 2021. If you need assistance in determining how to make those expenditures, please contact me immediately.

In addition to the HCSO, your business is also covered by other laws which are enforced by OLSE, including but not limited to: Paid Sick Leave Ordinance, COVID-Related Employment Protections Ordinance, and more. Please ensure you are knowledgeable about, and compliant with, these laws

If you have any questions about this letter or the information requested, you should contact me immediately by telephone at 415-554-6270 or by email at Bianca.Polovina@sfgov.org.

Sincerely,



Bianca Polovina
Compliance Officer

Enclosures: Questions Accompanying June 11, 2021 Letter to Heritage on the Marina.
Spreadsheet for response to Question re: hours and health care expenditures (by email only to Bianca.Polovina@sfgov.org)