

EXCHANGE NOTICE DUE OCTOBER 1

Employee Benefits Alert
September 19, 2013

Beginning January 1, 2014, individuals will be able to purchase coverage through a new private health insurance market, referred to as the Exchange. The Patient Protection and Affordable Care Act (ACA) requires employers to notify their employees of the new coverage options available through the Exchange through an Exchange Notice. The U.S. Department of Labor (DOL) issued Technical Release No. 2013-02, providing temporary guidance regarding this notice requirement. The Technical Release also provides a link to the DOL's revised model Consolidated Omnibus Budget Reconciliation Act (COBRA) election notice that includes information regarding health coverage alternatives offered through the Exchange.

Which Employers Must Send the Notice?

All employers subject to the Fair Labor Standards Act (FLSA) are required to provide the Exchange Notice. In general, the FLSA applies to employers that employ one or more employees who are engaged in, or produce goods for, interstate commerce. The FLSA also covers the following entities: hospitals; institutions primarily engaged in the care of sick, aged, mentally ill, or disabled people who reside on the premises; schools for children who are mentally or physically disabled or gifted; preschools, elementary and secondary schools, and institutions of higher education; and federal, state, and local government agencies. The DOL's Wage and Hour Division provides guidance relating to the applicability of the FLSA in general, including an internet compliance assistance tool to determine applicability of the FLSA.

Which Employees Must Receive a Notice?

Employers must provide an Exchange Notice to each employee, regardless of whether the employee is enrolled in the employer's plan or whether the employee is part-time or full-time. Employers are not required to provide a separate Notice to dependents or other individuals who are not employees.

What Must Be in the Notice?

The Exchange Notice must advise employees of the existence of the Exchange and available coverage options, as well as contact information and a description of the services provided by the Exchange. The Notice must also inform employees that they may be eligible for a premium tax credit if they purchase coverage through the Exchange. In addition, the Notice must include a statement informing employees

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that if they purchase coverage through the Exchange, they may lose employer contributions (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes. To satisfy the content requirements, model language is available [here](#).

When and How Must the Notice Be Delivered?

Beginning October 1, 2013, employers are required to provide the Notice to each new employee at the time of hiring. For 2014, the department will consider a Notice to be provided at the time of hiring if the Notice is provided within 14 days of an employee's start date.

With respect to employees who are current employees before October 1, 2013, employers are required to provide the Notice not later than October 1, 2013. The Notice is required to be provided automatically, free of charge. The Notice may be provided by first-class mail. Alternatively, it may be provided electronically if it meets the requirements of the DOL's electronic disclosure safe harbor.

Changes to DOL's Model COBRA Election Forms

In addition to providing a model Exchange Notice, the DOL has modified its model COBRA Election Notice to provide information regarding coverage options available through the Exchange.