



Exchange Notices to Employees Required by October 1, 2013

On May 8, 2013, the DOL provided temporary guidance about the required notice to employees related to public health insurance exchanges for individuals and small businesses. The DOL now refers to the public exchanges as "Health Insurance Marketplaces."

The DOL temporary guidance provides two model forms of notices, one for employers who offer a health plan to some or all employees and one for employers who do not offer health coverage to employees.

Employers subject to the Notice requirement

All employers who are subject to the Fair Labor Standards Act ("FSLA") and employ one or more employees are required to provide this notice. The FSLA generally applies to employers with an annual volume of business of \$500,000 or more.

Employees who must receive the Notice

All employees, part-time and full time, regardless of eligibility for employer provided health coverage must receive this notice. Dependents or other individuals who may be eligible for coverage are not required to receive the Notice.

Contents of the Notice:

- The existence of the new Health Insurance Marketplace;
- Description of eligible employees;
- Whether the health plan meets the minimum value standard, and whether the employer intends the coverage to be affordable, based on the wages of each employee;
- The employee may be eligible for a premium tax credit if the employee purchases a qualified health plan through the Marketplace; and

- If the employee purchases a qualified health plan through the Marketplace, the employee may lose the employer contribution to any health benefits plan offered by the employer and that all or a portion of such an employer contribution may be excludable from income for federal income tax purposes.

When the Notice must be provided:

- Current employees must receive the notice by not later than October 1, 2013
- Employees hired on or after October 1, 2013 and before January 1, 2014 must receive the notice on date of hire.
- Employees hired after December 31, 2013 must receive the notice within 14 days after date of hire.

Revised COBRA notice:

The DOL temporary guidance includes a revised COBRA notice which adds a reference to the Health Insurance Marketplace as an option to COBRA coverage.

Comments:

- (1) *The DOL model notices are not a required form of notice, but may be used to comply with this notice requirement. Therefore, some employers may elect to provide customized notices, such as one for each plan offered by an employer that sponsors multiple plans.*
- (2) *The DOL model notices include optional provisions about the coverage currently offered by the employer and the changes the employer may make for the new plan year, without any indication of when the new plan year will start. It would be helpful to add the starting date of the plan year beginning in 2014.*
- (3) *The timing of the mailing or electronic distribution to employees of the required Health Insurance Marketplace notice should not be made by employers until September 2013, because the notices will prompt questions from employees about the Health Insurance Marketplaces that may not be answerable until then.*

- (4) *This guidance is “temporary” with an assurance from the DOL that “future regulations or other guidance on these issues will provide adequate time to comply with any additional or modified requirements.” So stay tuned in, this is not the last word from the DOL about the Health Insurance Marketplace Notice requirement.*
- (5) *The revised COBRA notice should not be distributed until October 1, 2013.*

Dated: June 13, 2013

Written by: Thomas C. Graves