



All Employers Face October 1st Health Reform Deadline

Insights

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With the Health Insurance Marketplace created by the Patient Protection and Affordable Care Act (PPACA) set to open its figurative doors for enrollment on October 1, 2013, employers face a new obligation. Nearly all employers must distribute a notice of coverage options to their employees no later than October 1, 2013; and after that date, to all new hires within 14 days of their start date. The Department of Labor (DOL) has issued two model notices that may be used to meet this obligation. One notice should be used by employers who offer employer-sponsored health insurance to some or all of their employees, and the other should be used by employers who do not offer coverage. The model notices can be found on the [DOL website](#) under the header “Notice to Employees of Coverage Options.”

Background

Section 1512 of PPACA created a new Fair Labor Standards Act (FLSA) section 18B that requires employers to provide notice to employees of coverage options available through the Health Insurance Marketplace. On May 8, 2013, the DOL issued temporary guidance regarding the notice requirement. This guidance will remain in effect until the DOL issues new regulations or other guidance.

Contents of the Notice

Employers may use the appropriate DOL model notice to satisfy the content requirements of the statute, or a modified version, provided the notice includes the following:

- information regarding the existence of a new Health Insurance Marketplace as well as contact information and a description of the services provided by the Health Insurance Marketplace; and
- notice that the employee may be eligible for a premium tax credit under Section 36B of the Internal Revenue Code if the employee purchases a qualified health plan through the Health Insurance Marketplace; and
- a statement informing the employee that if the employee purchases a qualified health plan through the Health Insurance Marketplace, the employee may lose the employer contribution (if any) to any health benefit plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.

Employers Subject to the Requirement

The obligation to distribute the notice applies to all employers subject to the FLSA. In general, this includes employers with one or more employees who are engaged in, or produce goods for, interstate commerce. For most employers, a test of not less than \$500,000 in annual dollar volume of business applies.

Employees Who Must Receive the Notice

The notice must be sent to all employees, regardless of plan enrollment status (if applicable) or of part-time or full-time status. Employers are not required to provide a separate notice to dependents or other individuals who are or may become eligible for coverage under the plan but who are not employees.

Timing and Distribution

You must provide the notice to all current employees not later than October 1, 2013. The notice is required to be provided automatically, free of charge.

You must also provide the notice to each new employee at the time of hiring beginning October 1, 2013. For 2014, the DOL 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.

The notice must be provided in writing in a manner calculated to be understood by the average employee. It may be provided by first-class mail. Alternatively, it may be provided electronically if the requirements of the Department of Labor's electronic disclosure safe harbor are met.

No Penalty for Noncompliance

In a FAQ published September 11, 2013, the DOL stated that employers covered by the Fair Labor Standards Act should provide a written notice to their employees about the Health Insurance Marketplace by October 1, 2013, but there is no fine or penalty under the law for failing to provide the notice.

Don't Be Fooled

Employers should pay close attention to these notice requirements to avoid common pitfalls, including:

- *My insurance provider is taking care of the notice requirement for me.* Be careful! Employers are required to send the notice to all employees. You should work with your provider to make sure all employees, not just plan participants, receive the notice.

- *I just looked at the DOL model notice, and we don't have time to fill out individualized information for every employee.* Don't worry! The individualized information requested on page 3 of the DOL model notice for employers who offer health coverage is optional. See the instructions included in the model notice for more details.
- *I'm sure this requirement doesn't apply to my small company.* Don't be so sure! As detailed above, the requirement applies to nearly all employers, large or small.

What You Should Do Now

These notices should be sent as soon as administratively possible to meet the October 1, 2013 distribution deadline. After that date, the notice should also be included in new hire materials, and distributed to new employees within fourteen (14) days of their start dates. Where appropriate, work with your provider and legal counsel to complete and distribute the notice.

If you have additional questions contact a member of the firm's Employee Benefits Practice Group.

This Legal Alert provides an overview of new requirements for employments emanating from a new law. It is not intended to be, and should not be construed as, legal advice for any specific factual situation.