

eBenefits Alert - Employers: Health Care Reform Exchange Notice Requirement is “Back On”

May 10, 2013

The original Health Care Reform employer "exchange notice" requirement in March 2013 was suspended earlier this year pending further guidance. On May 9, 2013, the DOL issued that guidance and model notices for employers to use in educating employees about the availability of health insurance on exchanges, now renamed health insurance marketplaces.. The guidance clarifies the types of employers who are subject to the requirement and specifies how the notice requirement may be satisfied. The guidance also provides new model language for COBRA notices that reflects the new health insurance marketplace information.

Do all employers have to give the notice?

Almost all. Any employer subject to the Fair Labor Standards Act (FLSA) must provide the notice, whether or not the employer provides health coverage. In general, employers with one or more employees involved in interstate commerce are subject to the FLSA, although most firms with less than \$500,000 in annual volume are exempt.

Does the notice have to go to all employees?

Yes. The notice must be provided to all employees, full-time and part-time, whether or not they are currently enrolled in the employer's health plan. It does not have to be sent separately to dependents.

When does notice have to be provided?

No later than October 1, 2013 for current employees. After that, new employees must receive the notice upon hire.

What does the notice have to say?

The notice has to inform employees:

- Of the existence of the Health Insurance Marketplace,
- Whether the employer offers health coverage to employees,



- Whether the coverage meets minimum value requirements,
- That if no coverage is offered, or the coverage doesn't meet minimum value requirements, a subsidy (premium tax credit) for coverage may be available to the employee,
- That if the employee purchases coverage on the exchange, any employer contribution to coverage may be lost, and
- That the employer contribution to coverage is excludable from income.

The Department of Labor has provided a model notice.

Do employers have to use the model notice?

No, but they do need to provide a notice meeting the content requirements above.

Can the notice be sent electronically?

Yes, if it meets the Department of Labor Requirements.

What do employers need to do now?

- Identify the contact person who will answer questions from the Health Insurance Marketplaces about employee coverage.
- Gather information necessary to prepare and distribute the notice, including the following action items:
- Identify which employees are eligible for coverage, which employees will be eligible within 3 months of providing the notice, and which employees are not eligible.
- Determine whether coverage offered meets minimum value requirements (insurers and brokers should be able to help with this).
- Determine the cost of premiums for employee-only coverage.
- If they know that there will be changes for next year, identify the new premium cost for employee-only coverage.

The Department of Labor's guidance and model notices in addition to the new COBRA model election notice including information about the Health Insurance Marketplaces are available at <http://www.dol.gov/ebsa/healthreform/>.

If you have any questions about the Health Care Reform Exchange and its requirements, please call contact Monica Kelley (monica.kelley@lathropgpm.com, 612.632.3367) or Kathi Wright (kathi.wright@lathropgpm.com, 612.632.3384) in the Gray Plant Mooty Employee Benefits & Executive Compensation practice group.

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