



Employer Exchange Notice Due To Employees By October 1, 2013 and New Hires Thereafter; Sample Notice

September 18, 2013

Fair Labor Standards Act (FLSA) § 18B requires that employers subject to the FLSA provide a notice to employees by October 1, 2013 and new hires thereafter. Most firms under \$500,000 in annual dollars received from "sales made or business done" are exempt from the FLSA and thus exempt from the notice requirement other than those specifically included regardless of annual income, which are hospitals; institutions primarily engaged in the care of the sick, aged, mentally ill, or disabled 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.

In addition, only employers with \$500,000 more in annual dollars received from "sales made or business done" who are also engaged in interstate commerce are subject to the FLSA. Examples of engaging in interstate commerce include:

- An employee uses a telephone, facsimile machine, the U.S. mail, or a computer e-mail system to communicate with persons in another state for the business;
- An employee who drives or flies to another state while performing his or her job duties;
- The business uses goods from an out of state supplier; or
- The business uses an electronic device that authorizes a credit/debit card purchase.

The model DOL Exchange Notice for employers with a health plan is located at <http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>. For employers with no health plan, the model notice is at <http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf>. Part B on the notice for employers with health plans is optional and complicated and many employers with health plans will not use it, preferring instead to customize the information on the Part B notice for employers with no health plans.

A simplified Lathrop Gage LLP Sample Notice is below.