

Exchange Notice

Health Care Reform

DOL Releases Long-awaited Exchange Notice, Updates COBRA Model Notice

On May 8, 2013, the U.S. Department of Labor (DOL) updated its Web page with Technical Release 2013-02, which includes temporary guidance on the notice to employees of coverage options (known as the “Exchange Notice”) required under the Patient Protection and Affordable Care Act (PPACA), commonly known as health care reform. The temporary guidance also included frequently asked questions (FAQs) about the notice requirement.

As background, PPACA requires that applicable employers provide each employee with a written notice providing information about the exchange (also referred to as “marketplaces”) and how to request assistance, describing the availability of a premium tax credit and outlining the implications for the employee if they choose to purchase a qualified health plan through an exchange. The law required employers to distribute the notice by March 1, 2013. However, on Jan. 24, 2013, the DOL announced that the Exchange Notice requirement was delayed until summer or fall 2013, so that the distribution deadline would coincide with the open enrollment period for the health insurance exchanges. In a surprise announcement, the DOL has provided this temporary guidance earlier than previously announced, so employers can now inform their employees about the upcoming coverage options available through the exchanges.

At the same time, the DOL also released a revised version of the COBRA Election Notice. The changes incorporate references to the exchanges as well as eligibility for premium tax credits. Finally, the revised COBRA Election Notice clarifies that pre-existing conditions will not be taken into account beginning in 2014.

Covered Employers

All employers covered under the Fair Labor Standards Act (FLSA) are subject to the Exchange Notice requirement. The DOL’s Wage and Hour Division provides an Internet compliance assistance tool to determine if an employer is subject to FLSA. See www.dol.gov/elaws/esa/flsa/scope/screen24.asp.

Regarding the COBRA notice, all private-sector group health plans maintained by employers that have at least 20 employees on more than 50 percent of its typical business days in the previous calendar year are subject to COBRA and may use this notice. Both full-time and part-time employees are counted to determine whether a plan is subject to COBRA, as well as any controlled group or affiliated service group associated with the employer.

Effective Date

Based on this temporary guidance, it is now clear that the deadline for employers to distribute the Exchange Notice to employees is Oct. 1, 2013. Additionally, employers are required to provide the notice to each new employee hired on or after Oct. 1, 2013, no later than 14 days after the employee’s start date. The notice must be distributed to all new employees, regardless of their eligibility for coverage under the employer’s group health plan, and regardless of whether the employee is full-time or part-time. Employers not offering group health plan coverage must also provide the notice. The DOL clarified that employers are permitted to use the model notice and rely on the temporary guidance prior to the Oct. 1, 2013, applicability date if they wish to do so.

Concerning the COBRA notice, use of the newest model election notice, appropriately completed, will be considered by the DOL to be good faith compliance with the election notice content requirements of COBRA.

Model Notices

Technical Release 2013-02 contains a model Exchange Notice for employers that offer coverage to some or all employees, and a separate model notice for employers that do not offer coverage to employees.

- A model notice for employers that offer a health plan to some or all employees is available at www.dol.gov/ebsa/pdf/FLSAwithplans.pdf.
- A model notice for employers that do not offer a health plan is available at www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf.
- The COBRA model Election Notice is available at www.dol.gov/ebsa/modelectionnotice.doc.
- The COBRA model Election Notice redlined to show May 2013 changes is available at www.dol.gov/ebsa/modelectionnoticeredline.doc.

Additional Resources

Technical Release 2013-02 (Including FAQs): www.dol.gov/ebsa/newsroom/tr13-02.html

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