

## Employers Must Provide Affordable Care Act Notice to All Employees By October 1, 2013, According to Department of Labor Guidance

The US Department of Labor (DOL) has issued guidance on the content, timing and delivery of the notices that employers are required to provide to employees, informing them of the availability of the health insurance exchanges beginning in 2014. Employers are required to provide the notice to all employees no later than October 1, 2013. Employers should begin preparing for this deadline and for answering questions from employees about the exchanges.

### Background

Pursuant to the Affordable Care Act, beginning on January 1, 2014 individuals will be eligible to purchase health insurance through public exchanges (also known as the marketplace). The Affordable Care Act amended the Fair Labor Standards Act (FLSA) to require that employers subject to the FLSA provide a notice to all employees that:

- describes the existence of the marketplace and how employees may obtain answers to questions about the marketplace
- explains that employees may be eligible for a tax credit or cost-sharing if they purchase health insurance through the marketplace and their employer's health plan does not meet certain minimum value and affordability requirements
- explains that if they purchase health insurance through the marketplace, they may lose the employer's portion of the premiums under the employer's health insurance plan and the tax benefit of such amount not being subject to income tax

### Employers Subject to the Notice Requirement

All employers that are subject to the FLSA must provide the notice. Generally, the FLSA applies to employers that are engaged in interstate commerce and have at least \$500,000 in annual revenue. Thus, the notice requirement will apply to virtually all mid-sized and large employers, and many small employers as well.

### Who Must Receive the Notice

Employers must provide the notice to all employees, regardless of part-time or full-time status or eligibility for the employer's health insurance plan. The notice does not need to be provided to dependents of employees.

### Timing and Delivery

Although the notice requirement was originally scheduled to be effective as of March 1, 2013, the DOL delayed the effective date so that it would coincide with the open enrollment period for the marketplace. Employers are required to provide the notice to all current employees no later than October 1, 2013. Beginning October 1, 2013, employers are required to provide the notice to new employees within 14 days of hiring.

The notice must be written in a manner that is easily understood by the average employee. It may be delivered by first-class mail or, if certain requirements are met, electronically.

### Model Notices

The DOL has made available two model notices -- one for employers that do not offer a health plan and another for employers that do offer a health plan. The [model notices](#) can be found on the DOL's website. Employers may modify the model notices as long as the modified notices otherwise meet the applicable requirements.

### Model COBRA Election Notice

The DOL also updated its model election notice under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to reflect the existence of the marketplace. The DOL indicated that the use of the model election notice will be considered to be good faith compliance with the election notice content requirements of COBRA. The updated notice is available [here](#).

### Next Steps

In advance of the October 1, 2013 deadline, employers should review the model notices developed by the DOL in order to assess whether it would be prudent to customize the notices to address employer-specific demographics and plan details. Employers should also update COBRA election notices.

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