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# DOL Issues Guidance on PPACA's Marketplace Notice to Employees and Revised COBRA Model Notice Requirements

By Kristi R. Gauthier / May 14, 2013

The Department of Labor ("DOL") has issued Technical Release 2013-02 which provides temporary guidance under the Patient Protection and Affordable Care Act ("PPACA") on an employer's Fair Labor Standards Act ("FLSA") requirement to provide notice to employees detailing information regarding health coverage options available through the Health Insurance Marketplace. The DOL has released two model notices to Employees of Coverage Options, one for employers that offer a health plan and one for employers that do not offer a health plan. Employers may rely upon the model notices to comply with the Health Insurance Marketplace notice requirement.

The DOL has also revised the model election notice under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") to provide information to qualified beneficiaries on the availability of coverage in the Marketplace.

## **What is the Marketplace?**

Beginning in January 2014, individuals will have access to affordable coverage through a new competitive private health insurance market now being referred to as the "Health Insurance Marketplace" or "Marketplace" (formerly referred to as the "exchange.") The Marketplace is intended to be a one-stop shop for individuals to shop for affordable health insurance coverage. Open enrollment for coverage in the Marketplace is scheduled to begin on October 1, 2013.

## **What are the purpose of the notices?**

The notices are intended to comply with the FLSA by providing employees with information regarding the Marketplace, health coverage options available, contact information and a description of services provided by the Marketplace. The notices also address the availability of tax credits that may be available to employees, as well as a statement informing employees that if an employee purchases coverage on the Marketplace, the employee may lose the employer contribution, if any, to any health benefits plan offered by the employer.

## **Who must receive a notice?**

Employers subject to the FLSA must provide a notice to every employee, regardless of enrollment status in a health plan or employment status (e.g. full-time, part-time) and regardless whether the employer sponsors a group health plan. Employers are not required to provide separate notices to dependents or other individuals who are or may become eligible for coverage under the plan but who are not employees.

## **When must the notice be provided?**

Notice must be provided to all existing employees no later than October 1, 2013. On and after October 1, 2013, the notice must also be provided to any new employees within 14 days of the employee's hire date.

The notice may be provided by first-class mail, or electronically if the requirements of the DOL's electronic disclosure safe harbor are met. 29 CFR 2520.104b-1(c).

## **Where can employers obtain a copy of the model notices?**

The model notices may be obtained via the following links:

Model notice for employers who offer a health plan to some or all employees, available at:

<http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>

Model notice for employers who do not offer a health plan, available at:

<http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf>

## **What changes have been made to the COBRA model election notice?**

In light of PPACA, on and after January 1, 2014, COBRA qualified beneficiaries may want to consider and compare health coverage alternatives that will be available through the Marketplace to COBRA continuation coverage. Employers should revise their COBRA election forms to provide information regarding the Marketplace and comply with these new requirements. Alternatively, employers should work with their COBRA administrators to ensure proper compliance.

The DOL has provided an updated COBRA model election notice which is available at: <http://www.dol.gov/ebsa/cobra.html>.

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