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LEGISLATIVE UPDATE

Eye on Washington



AFFORDABLE CARE ACT (ACA) EXCHANGE NOTICE REQUIREMENTS DELAYED

Section 18B of the Fair Labor Standards Act (FLSA), as added by the Affordable Care Act (ACA), provides that employers subject to the FLSA must furnish employees with a written notice, by March 1, 2013, explaining the availability of Exchanges, including the services provided by Exchanges, how to contact an Exchange, and other pertinent information.

On January 24, 2013, the Department of Labor (DOL) announced that the notice requirement will not take effect on March 1, 2013. The announcement was made as part of a "Frequently Asked Questions" (FAQ) document regarding the ACA.

Background

The ACA provided that employers must provide to each employee at the time of hire, and for current employees, no later than March 1, 2013, a written notice:

1. Informing the employee of the existence of Exchanges, including a description of the services provided by the Exchanges, and the manner in which the employee may contact Exchanges to request assistance;
2. If the employer plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs, that the employee may be eligible for a premium tax credit under section 36B of title 26 and a cost sharing reduction under section 18071 of title 42 if the employee purchases a qualified health plan through an Exchange; and
3. If the employee purchases a qualified health plan through an Exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.

Notice Requirement Delayed Until the Late Summer or Fall of 2013

The DOL posted an FAQ document on January 24th which announced the delayed effective date. The DOL explained that the notice will be coordinated with the Department of Health and Human Services' educational efforts and Internal Revenue Service guidance on minimum value, and noted that the agencies intend to provide employers with sufficient time to comply. The DOL "expects that the timing for distribution of notices will be the late summer or fall of 2013, which will coordinate with the open enrollment period for Exchanges."

The agencies are considering model language that could be used to satisfy the notice requirement, as well as alternatives. Future guidance on the Exchange notice requirement is expected to provide employers with flexibility and adequate time to comply.

For the DOL announcement, see:
<http://www.dol.gov/ebsa/faqs/faq-aca11.html>.

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