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HEALTH CARE REFORM

Eye on Washington

NOTICE TO EMPLOYEES OF MARKETPLACE (EXCHANGE) COVERAGE OPTIONS

On May 8th, the U.S. Department of Labor (DOL) issued Technical Release 2013-02 to provide guidance to employers regarding a new requirement — created by Section 1512 of the Affordable Care Act (ACA) — that employers provide a notice to employees of coverage options available through the Health Insurance Marketplace (aka “Exchange”) by October 1, 2013.

As background, under the ACA, individuals will be able to purchase health coverage through state or federally facilitated Health Insurance Marketplaces. Individuals will be able to enroll for coverage through the Marketplace beginning October 1, 2013, with initial coverage beginning effective January 1, 2014. The Technical Release provides needed guidance to employers regarding the notice requirement and provides Model Notices.

Almost All Employers Are Subject to the Notice Requirement

In contrast to the ACA Employer Shared Responsibility provisions, which generally only apply to employers with at least 50 full-time employees and full-time equivalent employees, the Marketplace notice requirement applies to all employers that are subject to the Fair Labor Standards Act (FLSA). In general, the FLSA applies to employers with at least one worker and annual revenues of more than \$500,000. For details on FLSA applicability, see www.dol.gov/elaws/esa/flsa/scope/screen24.asp.

Notice Content and Format

The Technical Release includes two model Marketplace notices: one to be used by employers offering health coverage and one to be used by employers not offering coverage.

Employers must provide the Marketplace Notice in writing to all existing employees no later than October 1, 2013, and to each new employee at the time of hire [but no later than within 14 days of an employee's start date]. The Notice can be furnished by first-class mail, or electronically in a manner that meets the requirements of the DOL's electronic disclosure safe harbor rules.¹

There can be no charge or costs to employees and such notices must include the following information:

1. A description of the services provided by the Health Insurance Marketplace and how to contact the Marketplace;
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 the Internal Revenue Code (the Code) if the employee purchases a qualified health plan through the Marketplace; and
3. If the employee purchases a qualified health plan through the Marketplace, the employee may lose any employer contribution to the employer-sponsored health benefits plan, and that all or a portion of such contribution may be excludable from income for federal income tax purposes.

Notices Are Only Required for Employees

Employers must provide the applicable Marketplace Notice to Employees of Coverage Options to all employees, regardless of their plan enrollment status or whether they are part-time or full-time. However, notices are not required for dependents or other individuals who are not employees.



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Model Notices

The Model Notices provided by the DOL feature general information in Part A, including the required information enumerated above. Part B advises the employee of information he or she will need to gather in order to apply for coverage through a Health Insurance Marketplace, including:

- Employer name and Federal Employer Identification Number
- Employer address and phone number
- The name, phone number and email address of an employer contact who can discuss employee health coverage with Marketplace officials

The following additional information only applies to employers who offer a health benefits plan to some or all employees:

- Information about any health coverage offered by the employer, including whether health coverage is offered to some or all employees, eligibility criteria, and availability of dependent coverage
- Whether the employer coverage meets the minimum value standard, and whether the cost of this coverage to the employee meets the affordability tests.²

1. See 29 CFR 2520.104b-1(c) Disclosures through electronic media

2. For details as to the affordability tests, see the *Eye on Washington* Affordable Care Act (ACA) Update Series: Affordability Safe Harbor Methods, March 19, 2013

Employers are permitted to modify the Model Notices, provided that they meet the content requirements described above. For the DOL Technical Release 2013-02 and model notices:

DOL Technical Release No. 2013-02

Model Notice to Employees of Coverage Options (for employers who offer a health plan to some or all employees)

Model Notice to Employees of Coverage Options (for employers who do not offer a health plan)

Additional information for employers regarding the Affordable Care Act is available at www.healthcare.gov and www.dol.gov/ebsa/healthreform.

Reliance

The guidance contained in Technical Release 2013-02 will remain in effect until the DOL issues new regulations or other guidance. Future regulations or other guidance on these issues are expected to provide adequate time to comply with any additional or modified requirements.

ADP Compliance Resources

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