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Frequently Asked Questions

Which Employers Must Provide the Notice?

Employers subject to the Fair Labor Standards Act ("FLSA") are required to provide the Exchange Notice. FLSA generally applies to employers that generate revenue in excess of \$500,000 and employ one or more employees. The FLSA also specifically includes employers that are hospitals, resident care institutions, schools, state and local government agencies.

Wasn't the Employer Mandate to offer Health Insurance postponed until 2015?

On July 2, 2013, the U.S. Department of the Treasury announced that penalties under the Employer Shared Responsibility provisions of Internal Revenue Code ("Code") § 4980H and related reporting requirements under § 6055 and § 6056 of the Code have been delayed until 2015. IRS Notice 2013-45 provided details on this transitional relief, confirming that the relief is limited to the Employer Shared Responsibility penalty provisions and information-reporting requirements. This transitional relief did not delay the requirement to provide notice to employees of Exchange coverage options. These notices must still be provided to all current employees by October 1, 2013

What if we don't provide health insurance coverage to our employees?

Notices must be sent to employees even if the Employer does not provide health insurance coverage.

Who must receive the notice?

The notice must be delivered to every employee, whether or not they have health plan coverage or are eligible for such coverage. This includes to full-time and part-time. Employers are not required to provide notices to dependents (whether or not they are covered or eligible) or to former employees, such as retirees or COBRA-qualified beneficiaries.

When must the notice be provided to new employees?

Effective October 1, 2013, the notice must be provided to each new employee at the time of hire. So long as notice is provided within 14 days of the date of hire the DOL will consider this requirement fulfilled.

When must the notice be provided to existing employees hired on or before October 1, 2013?

The notice must be provided to existing employees on or before October 1, 2013.

How must the notice be delivered?

The notice must be provided in writing in a manner estimated to be understood by the average employee. It may be provided by first-class mail. The notice can be provided electronically; however, it must comply with the DOL's electronic disclosure requirements. In general, this means that it is only feasible to provide notice electronically to employees who use a computer as part of their regular job duties. Employees who do not use a computer to perform their duties would not be eligible to receive the documents electronically unless they specifically consent to electronic delivery of the notice. The notice must comply with the same standard as other Employee Retirement Income Security Act (ERISA) notices.

What must the notice say?

Under the statute, the notice must include the following information:

- Notification of the existence of the Marketplace, a description of services provided by the Marketplace, and contact information for the Marketplace
- That the employee may be eligible for a premium tax credit or other cost-sharing reduction if the employer-sponsored plan covers less than 60% of allowable claims (i.e., does not provide minimum value) and the employee purchases qualifying health coverage through the Marketplace
- That the employee may lose the tax-free contributions from the employer (if any) toward coverage offered through the employer's plan if the employee purchases health coverage through the Marketplace

Part B of the model notice for employers offering health coverage requires very specific information about the employer's health coverage, including a checkbox to indicate whether the coverage is "affordable" or provides "minimum value". "Affordable" and "Minimum Value" are terms defined in the IRS Code. Part B also includes additional employee-specific information intended to be helpful to employees who might make an application for coverage through the Marketplace.

Employers may have to prepare and deliver multiple versions of Part B, depending on the types of coverage offered to their employees. Page three of the model notice states that employers have the option of completing Part B sections 13-16, which include additional information related to applying for Marketplace coverage.

The technical release provides that employers may use one of the model notices or a modified version, provided the notice meets the applicable content requirements.

Are there model notices an employer can use?

Yes. The Department of Labor provides model notices that can be used both for employers that do and do not offer health coverage.

What are the penalties if we ignore this requirement?

It does not appear that there are separate penalties imposed for ignoring the exchange notice requirement. Just because there are no penalties does not mean that there are not consequences for failing to provide these notices. The FLSA authorizes administrative actions, civil suits and criminal prosecutions for violations of certain FLSA sections. Moreover, employers may have a fiduciary obligation to plan participants and beneficiaries. It is therefore a good idea to comply with this important regulation.

What does “Affordable” mean?

A health plan is “Affordable” under the ACA if the employee’s portion of the health insurance premium cost is less than 9.5% of the employee’s annual household income. Employers can use the information about the employees wages as reported in Box 1, Form W-2 as a “safe harbor” method of calculating affordability.

What is the Health Insurance Marketplace or “Exchange”?

The Health Insurance Marketplace, sometimes known as the Health Insurance Exchange is a new way to find health coverage that fits the budgets and needs of Americans. The Health Insurance Exchange is a set of government-regulated and standardized health care plans in the United States, from which individuals may purchase health insurance eligible for federal subsidies. All exchanges must be fully certified and operational by January 1, 2014, under federal law.