



Health Care Reform Update



IMPORTANT NOTICE REGARDING HEALTHCARE REFORM Update 14

May, 2013

Guidelines for the Model Notice to Employees of Coverage Options

Beginning January 1, 2014, individuals and employees of small businesses will have access to coverage through a new exchange health insurance market – the Health Insurance Marketplace. Open enrollment for health insurance coverage through the Marketplace begins October 1, 2013. Affordable Care Act creates a new Fair Labor Standards Act (FLSA) section 18B requiring a notice to employees of coverage options available through the Marketplace.

The DOL Technical Release No 2013-02 provides temporary guidance regarding the notice requirement under FLSA section 18B and announces the availability of the Model Notice to Employees of Coverage Options. This Technical Release also provides an updated model election notice for group health plans for purposes of the continuation coverage provisions under Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to include additional information regarding health coverage alternatives offered through the Marketplace.

Background

Section 18B of the FLSA generally provides that, in accordance with regulations, an applicable employer must provide each employee at the time of hiring (or with respect to current employees, not later than March 1, 2013), a written notice:

1. Informing the employee of the existence of the Marketplace (referred to in the statute as the Exchange) including a description of the services provided by the Marketplace, and the manner in which the employee may contact the Marketplace 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 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 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.

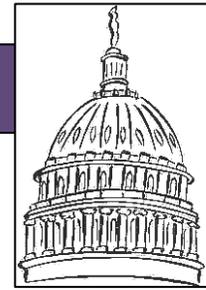
On January 24, 2013, the Department of Labor (DOL) issued guidance stating the notice requirement would not take effect on March 1, 2013. The DOL stated the timing for distribution of notices would be the late summer or fall of 2013.

The DOL is now issuing this temporary guidance and model notice in advance of the expected timeframe because they have received several requests from employers for a model notice on an earlier. Therefore, employers are permitted to use the model notice and/or rely on this temporary guidance prior to the applicability date stated below to inform their employees earlier.

The DOL has stated that Technical Release No 2013-02 will provide temporary guidance that will be considered as compliance with FLSA section 18B. Also, this guidance will remain in effect until the DOL produces regulations or other guidance.



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Employers Subject to the Notice Requirement

In general, the FLSA applies to employers that employ one or more employees who are engaged in, or produce goods for, interstate commerce.

For most firms, a test of not less than \$500,000 in annual dollar volume of business applies (See www.dol.gov/compliance/guide/minwage.htm). The FLSA also specifically covers the following entities: hospitals; institutions primarily engaged in the care of the sick, the aged, mentally ill, or disabled who reside on the premises; schools for children who are mentally or physically disabled or gifted; preschools, elementary and secondary schools, and institutions of higher education; and federal, state and local government agencies.

The DOL's Wage and Hour Division provides guidance relating to the applicability of the FLSA in general including an internet compliance assistance tool to determine applicability of the FLSA. See www.dol.gov/elaws/esa/flsa/scope/screen24.asp.

Providing Notice to Employees

Employers must provide a notice of coverage options to each employee, regardless of plan enrollment status (if applicable) or of part-time or full-time status. Employers are not required to provide a separate notice to dependents or other individuals who are or may become eligible for coverage under the plan but who are not employees.

Form and Content of the Notice

Pursuant to the statute, the notice to inform employees of coverage options must include information regarding the existence of a new Marketplace as well as contact information and description of the services provided by a Marketplace. The notice must also inform the employee that the employee may be eligible for a premium tax credit under section 36B of the Code if the employee purchases a qualified health plan through the Marketplace; and a statement informing the employee that if the employee purchases a qualified health plan through the Marketplace, 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.

Timing and Delivery of Notice

Employers are required to provide the notice to each new employee at the time of hiring beginning October 1, 2013. For 2014, the Department will consider a notice to be provided at the time of hiring if the notice is provided within 14 days of an employee's start date.

With respect to employees who are current employees before October 1, 2013, employers are required to provide the notice not later than October 1, 2013. The notice is required to be provided automatically, free of charge. The notice must be provided in writing in a manner calculated to be understood by the average employee. It may be provided by first-class mail. Alternatively, it may be provided electronically if the requirements of the Department of Labor's electronic disclosure safe harbor at 29 CFR 2520.104b-1(c) are met.



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Model Notice

To satisfy the content requirements for FLSA section 18B, model language is available on the Department's website www.dol.gov/ebsa/healthreform. There is one model for employers who do not offer a health plan and another model for employers who offer a health plan or some or all employees. Employers may use one of these models, as applicable, or a modified version, provided the notice meets the content requirements described above.

Guidance for the Model COBRA Election Notice

In general, under COBRA, an individual who was covered by a group health plan on the day before a qualifying event occurred may be able to elect COBRA continuation coverage upon a qualifying event (such as termination of employment or reduction in hours that causes loss of coverage under the plan). A group health plan must provide qualified beneficiaries with an election notice, which describes their rights to continuation coverage and how to make an election.

Some qualified beneficiaries may want to consider and compare health coverage alternatives to COBRA continuation coverage that are available through the Marketplace. Qualified beneficiaries may also be eligible for a premium tax credit (a tax credit to help pay for some or all of the cost of coverage in plans offered through the Marketplace).

The Department of Labor has a model election notice that plans may use to satisfy the requirement to provide the election notice under COBRA. This notice is being revised to help make qualified beneficiaries aware of other coverage options available in the Marketplace. As with the earlier model, in order to use this model election notice properly, the plan administrator must complete it by filling in the blanks with the appropriate plan information. Use of the model election notice, appropriately completed, will be considered by the Department of Labor to be good faith compliance with the election notice content requirements of COBRA.

The model election notice is available in modifiable, electronic form on the Department's website at www.dol.gov/ebsa/cobra.html. A clean copy is available, as is a redline from the prior model notice to help interested stakeholders identify the changes.

Bernie Lowe & Associates, Inc. is not providing any legal advice with regard to compliance with the requirements of the Affordable Care Act ("ACA"). Bernie Lowe & Associates, Inc. makes no representation as to the impact of plan changes on a plan's grandfathered status or interpretation or implementation of any other provisions of ACA. Bernie Lowe & Associates, Inc. will not determine whether coverage is discriminatory or otherwise in violation of Internal Revenue Code Section 105(h).