



SecureOne Benefit Administrators, Inc

News Alert!

No Penalties for Noncompliance

September 13, 2013

Exchange Notice: No Penalties for Noncompliance

The Department of Labor released an FAQ based on questions submitted by SPBA members stating that there was **no fine or penalty under the law for failing to provide the Exchange Notice**. The information was released late on Sept. 11, 2013 as an un-numbered FAQ announcing that employers cannot be fined or penalized for failing to provide employees with the Notice of Coverage options available through the health insurance exchanges. The FAQ is posted on the SPBA website.

SPBA previously sent to you information indicating that all employers have a responsibility to send out the Exchange Notice (Notice of Coverage Options). However, if they fail to do so, the FLSA will not impose a penalty for lack of compliance with the Exchange Notice. The DOL FAQ supports our position. However, SPBA maintains that it remains the responsibility of employers to maintain adequate communications with plan participants. SPBA believes that in addition to providing the required Exchange Notice, employers and group health plans must ensure that other participant communications, such as the Summary of Benefits and Coverage, are communicated.

The DOL continues to vet their decisions through the tri-agencies, including IRS and HHS. DOL spokespersons in conversations with SPBA today, indicated that they did not discuss potential IRS violations when clearing the FAQ through the agencies. Furthermore, SPBA heard reports that while the DOL field offices had received the notice, they were not conversant on the specific issues related to sending out the Exchange Notice form. If you have questions, we remind you that SPBA has posted information on the website regarding a free DOL Webinar taking place next week that will address the Exchange Notice as well as other ACA compliance issues.

It is important to note that DOL maintains that it remains a “best practice” to provide updated notices and information to plan participants and that providing the Exchange Notice will create efficiencies for individuals seeking coverage from the State Marketplace/Exchanges. SPBA continues to communicate with IRS and DOL to establish whether lack of compliance with the Exchange Notice requirement raises implications under other federal statutes. This is not clear. If your clients have specific questions or concerns regarding exposure to penalties or violations, we recommend that they contact their legal counsel.

Just to recap, the FLSA does not impose a separate penalty, and the Exchange Notice requirement falls under the FLSA.

SecureOne; keeping our clients informed on the “PPACA” front.



678 Front Avenue, Suite 420
Grand Rapids, MI 49504
Phone: 800-876-7475 / Fax: 616-454-4338
www.secureoneinc.com

