



SecureOne Benefit Administrators, Inc News Alert!

May 2013

Notice of Exchanges Now Due October 1

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The Notice of Health Insurance Marketplace (formerly known as the Notice of Exchanges) is finally here! The Department of Labor (DOL) has announced that employers must distribute it by October 1, 2013. The DOL also has released an updated COBRA Election Notice that addresses the availability of coverage through the new Health Insurance Marketplace.

New Notice of Health Insurance Marketplace

Health Care Reform requires employers to provide existing employees and new hires with a written notice about the existence of the Health Insurance Marketplace. Originally, the DOL required distribution by March 1, 2013, but postponed the requirement until it could issue guidance and so that the notice would more closely align with the start-up date for the Marketplace.

Which Employers Are Subject to the Requirement?

All employers subject to the Fair Labor Standards Act (FLSA) must distribute notices to employees, even employers that do not offer a group health plan.

Who Must Receive the Notice?

Employers must distribute the Notice to each employee, regardless of part-time or full-time status or whether the individual is currently enrolled or eligible to enroll in the employer's group health plan. Employers are not required to send a separate notice to dependents or individuals who may become eligible for coverage but who are not employees.

Where Can I Find the Notice?

The Department of Labor has issued two model notices on its website – one for employers who offer a group health plan (<http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>) and another for employers who do not offer a group health plan (<http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf>)

Do I have to Use One of the Model Notices?

No, but if you create your own notice, you must include the following information:

- The existence of the Marketplace
- A description of the services provided by the Marketplace
- How to contact the Marketplace to request assistance
- That the employee may be eligible for a premium tax credit for coverage purchased through the Marketplace
- That if the employee purchases coverage through the Marketplace, the employee may lose the employer contribution (if any) under the employer's group health plan and the tax benefits of such contribution

Moreover, you must ensure that the notice is written in a manner that can be understood by the average employee.



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Are There Any Optional Parts to the Notice?

For those employers that offer health coverage to all or some of their employees, the model notice includes an optional section that allows employers to clarify:

- Whether the employee is currently eligible for coverage or, if the employee is in a waiting period, the date coverage will be available to the employee
- Whether the employer offers a health plan that meets the minimum value standard
- The amount the employee would have to pay in premiums for the lowest-cost plan that meets the minimum value standard and how often such premiums are required to be paid
- Whether the employer plans to make changes to the health plans offered in the next plan year, and what the cost would be of the new plan

Employers will want to weigh the administrative burden of customizing this section of the form against the potential administrative burden of having to respond to questions from employees applying for Marketplace coverage.

When Does the Notice Need to Be Distributed?

Employers must provide the Notice automatically and free of charge as follows:

- Beginning October 1, 2013, to newly hired employees. Through 2014, a notice will be deemed to be given "upon hire" if it is provided within 14 days of the employee's start date
- No later than October 1, 2013 to those who are employed prior to that date

How Can I Distribute the Notice?

You must distribute the notice in written form to your employees. You may distribute it via first-class mail or electronically if you follow the DOL's Electronic Safe Harbor Procedures.

Modified COBRA Election Notice

The Department of Labor has also updated its model COBRA election form in the following ways:

- Including new language suggesting that those eligible for COBRA continuation coverage should consider applying for coverage through the Marketplace as an alternative to COBRA coverage
- Removing language about gaps in coverage and their effect on the individual's ability to obtain coverage without pre-existing-condition exclusions (which is no longer relevant in 2014, when plans may no longer impose any pre-existing-condition exclusions)
- Removing language about trade adjustment assistance under the Trade Act of 2002 (which expires after 2013)

The updated election notice is available in modifiable, electronic format on the DOL's website at: <http://visit.wnj.com/e/4002/ebsa-cobra-html/34n116/627096335>. Employers are not required to use the model COBRA election form, but use of the form will be deemed to satisfy the election notice requirement under the DOL's COBRA regulations. Employers who use their own form should consider making similar changes.

Information provided by Warner, Norcross & Judd LLP, Attorneys at Law. www.wnj.com.



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