

Facts for Employers

Temporary Guidance – Employee Notice of Exchange



OVERVIEW: On May 8, 2013, the Department of Labor (DOL) provided temporary guidance on the Employee Notice of Exchange. The Affordable Care Act created a new section of the Fair Labor Standards Act (FLSA), requiring certain employers to provide notice to employees of coverage options available through the health insurance Marketplace or an exchange, in Massachusetts, the Health Connector.

Which employers are subject to the notice requirement?

The notice requirement applies to employers subject to the FLSA. Guidance to determine if FLSA applies to you as an employer is available here:

www.dol.gov/elaws/esa/flsa/scope/screen24.asp.

Which employees must receive the notice?

Employers must send the notice to each employee including part-time employees; however, a separate notice to dependents is not required.

What information is contained in the notice?

Employers must inform employees about:

- The existence of an exchange and kinds of services provided by an exchange
- How an employee may contact the exchange for assistance
- If the value of the employer plan is below 60%, the possible eligibility for a premium tax credit if the employee buys a Qualified Health Plan (QHP)
- A statement telling the employee that if the employee buys a QHP, the employee may lose any employer contribution 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

When must the notice be delivered?

- New Employees: For each new employee at the time of hiring beginning October 1, 2013. (In 2014, the time of hiring means within 14 days of an employee's start date)
- Current Employees: Employers are required to provide the notice no later than October 1, 2013

How must the notice be delivered?

- In a manner easily understood by an average employee
- By first-class mail
- Electronically, if the requirements of the DOL's electronic disclosure safe harbor are met

Is there a Model Notice?

- Yes, a Model Notice is available at 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 for some or all employees. However, the Massachusetts Health Connector intends to issue guidance specific to Massachusetts employers. HNE will update this FAQ once the Connector has issued its guidance.

Does this notice impact any other notice requirements?

- Yes, the DOL has also provided revisions to the Model COBRA Election Notice. The COBRA notice is being revised to help make qualified beneficiaries aware of other coverage options available in the Marketplace. The revised COBRA forms are available at www.dol.gov/ebsa/cobra.html.