

### Employers Must Provide Notices Regarding Availability of Exchange Coverage

The Patient Protection and Affordable Care Act (PPACA) requires employers to provide notices, by March 1, 2013, to all employees regarding the availability of their health coverage options through the exchanges, or what the federal government recently rebranded as "the Marketplace." In January, the Department of Labor announced delayed enforcement of the exchange coverage notice provision (which added Section 18B to the Fair Labor Standards Act). The Department of Labor (DOL) issued temporary guidance on May 8, 2013, in ([Technical Release 2013-02](#)) and model notices for employers to provide notice of coverage options through the Marketplace. The implication of the temporary guidance is that employers may use the model notices and rely on the temporary guidance earlier, but additional guidance and modifications to the model notices are expected.

### Who Must Receive a Notice

All employees must receive a notice of exchange coverage. Full-time and part-time employees are included. Notices must be provided without regard to eligibility or participation in the employer group health plan and without regard to whether or not the employer actually offers a group health plan.

### When Notices Must Be Distributed

Notices must be distributed to all current employees before **October 1, 2013**. Notices must be provided to each new employee hired after October 1, 2013. Notices are required to be provided within 14 days of hire to new employees.

### Information Included in the Notice

An exchange coverage notice must include:

- Information about the existence of the exchange, including a description of the services provided by the exchange and how to contact the exchange;
- A statement that the employee may be eligible for subsidized exchange coverage (i.e., premium tax credit under Internal Revenue Code § 36B), if the employee obtains coverage through the exchange and the employer's plan fails to meet a 60% minimum value; and
- A statement that the employee may lose the employer contribution (if any) toward the cost of employer coverage (all or a portion of which may be excluded from income for Federal income tax purposes) if the employee obtains coverage through the exchange.

### Where to Obtain a Copy of Model Notices

The DOL created two model exchange coverage notices: [one for employers who do not offer](#) a health plan and the other [for employers who do](#) offer a health plan for some or all employees. Model notices may also be obtained directly from the DOL's Employee Benefits Security Administration website at [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

### How Notices Should be Distributed

Notices should be distributed in compliance with DOL requirements in a manner reasonably calculated to ensure actual receipt of the material by the participant. These methods include:

- Hand-delivered to employees at their worksite (merely posting material is not acceptable)
- U.S. mail via first, second or third class only if return and forwarding postage is guaranteed and address correction is requested
- Electronic media (in accordance with electronic distribution guidelines)

Electronic distribution of notices to active employees requires that employees have work-related computer access at any location where the employee performs his or her duties and that they have access to the employer's electronic information system as an integral part of those duties (merely providing a computer in a common area does not satisfy this requirement). The electronic transmittal must contain a statement that the employee may request a paper copy.

Notices required to be given to employees without work-related access, former employees, spouses or dependents may be provided electronically if the individuals give written consent to receive notices in electronic format. Prior to consenting to receive electronic distribution of notices, an individual must be given a statement that clearly explains the types of documents to which the consent applies, that consent can be withdrawn at any time, the procedures for withdrawing consent and updating the address used for receipt of such documents, the right to request and obtain paper versions free of charge and hardware or software need to access and retain electronically distributed documents.

### Additional Information

The DOL also modified and reissued its model COBRA election notice to include information about the availability of exchange coverage options and eliminate certain obsolete language in the earlier model. A copy of the new model COBRA election notice is available on the DOL's [COBRA webpage](#).

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