

**FEDERAL HEALTHCARE REFORM:  
PATIENT PROTECTION AND AFFORDABLE CARE ACT  
REQUIRED EMPLOYER NOTICE INFORMING EMPLOYEES OF  
EXCHANGE**



On May 8, 2013, the Department of Labor (“DOL”) issued guidance and a model notice for employers to use in fulfilling their requirement to notify their employees about their options for healthcare coverage under the Affordable Care Act (“ACA”). The questions below are intended to provide information about the requirements.

**Q1: What is the notice requirement for employers?**

The ACA requires employers to provide a one-time notice to employees informing them of coverage options available through their state’s Exchange. Employers must provide a notice to each employee, even if the employee is not currently enrolled in the employer’s plan, and regardless of the part-time or full-time status of the employee.

**Q2: Which employers are impacted?**

The notice requirement applies to employers who are subject to the Fair Labor Standards Act (“FLSA”). In general, the FLSA applies to businesses that employ one or more employees who are engaged in, or produce goods for, interstate commerce with an annual volume of business exceeding \$500,000. Regardless of the volume of business, the FLSA 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.

**Q3: What is the required content for the notice?**

The notice must include the following required content:

- information regarding the existence of the Exchange;
- contact information and description of the services provided by the Exchange;
- information that the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code if the employee purchases a qualified health plan through the Exchange; and
- a statement informing the employee that if the employee purchases a qualified health plan through the Exchange, 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.

**Q4: Is there a “model notice” employers can use?**

Yes. The DOL has issued a notice employers can use on [www.dol.gov/ebsa/healthreform](http://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 to some or all employees. Employers are not required to use the model notice; they are required only to provide a notice that meets the content requirements described above.

**Q5: When must the notice be sent out?**

Before October 1, 2013, employers are required to provide the one-time notice to current employees no later than October 1, 2013. The notice is required to be provided automatically, free of charge.

Beginning October 1, 2013, employers are required to provide the notice to each new employee at the time of hiring. For 2014, the notice must be provided within 14 days of an employee's start date.

**Q6: Can I email the notice to my employees?**

The notice 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.

Reference: DOL Technical Release No. 2013-02 at <http://www.dol.gov/ebsa/newsroom/tr13-02.html>

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