



“Meeting employee needs is a challenge. Meeting the government’s is critical.”

Employer Compliance Alert

EMPLOYERS MUST PROVIDE NOTICES REGARDING AVAILABILITY OF EXCHANGE COVERAGE

A provision of the 2010 health care reform law requires employers to provide notices, by March 1, 2013, to all employees regarding the availability of health coverage options through the state-based exchanges created pursuant to that law.

In January, the Department of Labor had announced delayed enforcement of the exchange coverage notice provision (which added Section 18B to the Fair Labor Standards Act) in light of the reality that, by March 1st, it was unlikely that enough information regarding the exchanges would be available, employers had no way of ascertaining some of the other information required to be included in the notices, and the agency would not have regulations or other guidance ready.

DOL issued temporary guidance on May 8, 2013 ([Technical Release 2013-02](#)) and model notices for employers to provide notice of coverage options through the exchanges, or what the federal government recently rebranded as "the Marketplace." Employers are required to issue exchange coverage notices no later than October 1, 2013. 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.

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 excludable from income for Federal income tax purposes) if the employee obtains coverage through the exchange.

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.

The exchange coverage notice must be provided to each employee regardless of the employee's status as full- or part-time and regardless of whether the employee participates in the employer's group health plan. In addition to providing the exchange coverage notice to those employed before October 1, 2013, employers must provide the notice to each new employee (again, regardless of status) hired on or after October 1, 2013 within 14 days of hire.

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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