

## Health Care Reform's New Employer Exchange Notice

Originally, employers were to be required to provide a notice about the new state Health Care Exchanges (now called Marketplaces) to active employees by March 1, 2013.

However, the deadline was delayed until October 1, 2013. This was meant to allow the Exchanges in each state to become operational prior to the notice delivery (which was not the case in most states on March 1, 2013). With this new guidance, employers must begin preparations to notify employees about the availability of alternative private health insurance through their state's Exchanges.

### Which Employers are Affected?

All employers are required to provide this Notice, including those who have less than 50 Full Time Equivalent (FTEs). This is an important clarification – **employers that are not subject to the “Pay-or-Play” Employer Mandate are still required to provide this Exchange Notice.**

### Who Receives the Notice and How?

Notices must be provided to both active part-time and full-time employees (not spouse or dependents) regardless of whether the

employees are covered under their employer's health plan. COBRA Qualified Beneficiaries may also be provided with information regarding the availability of the Exchange.

The notice must be provided automatically, free of charge, and written in language that the average employee can understand (covered using the Model Notices below).

The delivery method follows the same rules as other required notices – first class mail or electronically following the electronic safe harbor guidelines.

### When Must the Notice Be Sent?

For current employees, an Exchange Notice must be provided prior to October 1, 2013. New employees hired on and after October 1, 2013 must receive the notice within 14 days of hire. This 14-day notification period for new hires is in effect from October 1, 2013 through 2014 (the timing to be revisited at that point).

Employers with non-calendar year plan years should make note that the timeline is the same for all employers, regardless of plan year or effective date or applicability of other provisions of PPACA (such as the Employer Mandate). Thus, for example, an employer

with a July 1<sup>st</sup> plan year must still provide the Exchange Notice by October 1, 2013.

#### Notice of Exchange (Format and Samples)

The Notice of Exchange is meant to notify employees of the availability of alternative private health insurance through their state's Exchanges, as well as details about the Exchange's services and contact information.

Sample Notices have been released by the DOL in [two template Notices](#): one for employers who offer a health plan to some or all of its employees and one for employers who do not offer a health plan to its employees. The applicable template should be modified by each employer to fit their situation.

Because COBRA is impacted as well, the DOL has also issued [a model COBRA Election Notice](#) for employers to use to make Qualified Beneficiaries aware of coverage options available through the Exchange. Whether or not a revised COBRA Election Notice is required is somewhat in debate as the COBRA regulations have not been changed to reflect this update.

#### Temporary Guidance, But...

Even though the guidance provided is temporary, the DOL has advised that employers should rely on this guidance until final guidance is produced. As a result, employers need to begin to prepare and distribute notices very soon.

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