

# PUBLICATION

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## The Clock is Ticking -- October 1 Deadline Approaches for Employers to Issue Health Care Exchange Notices

August 12, 2013

### REMINDER: Employer Notices Regarding Health Care Exchanges Due by October 1, 2013

U.S. Department of Labor (DOL) guidance issued under the Affordable Care Act (ACA) requires employers to provide employees with a notice regarding health care exchanges now called "marketplaces." The DOL has created model Exchange Notices that employers can use to meet the Exchange Notice requirement:

- Model notice for employers that offer a health plan to some or all employees
- Model notice for employers that do not offer a health plan to any employees

This notification requirement applies whether or not employees are covered in the employer's health plan (if any), and whether they are full-time or part-time employees.

#### *Who Must be Notified*

Employers must provide the notice to **all** current employees, regardless of full or part-time status and regardless of enrollment in an employer's health plan, no later than **October 1, 2013**. For employees hired after October 1, 2013, employers must provide the notice to new employees within 14 days of an employee's start date. Employers are not required to provide a separate notice to dependents or other individuals who are or may become eligible for coverage under the health plan but who are not employees.

#### *How Employees May Be Notified*

The DOL permits employers to choose any of three notification methods:

1. Employers may hand deliver the notice to each employee.
2. Employers may mail the notice via first-class U.S. Mail to each employee.
3. Employers may deliver the notice electronically to each employee, but must satisfy DOL's safe harbor requirements below.

#### *Electronic Delivery Safe Harbor Requirement*

Merely posting a disclosure notice on the employer's website so it is available to employees will not by itself satisfy this disclosure requirement. Emailing the notice directly to each employee is the safest way to assure compliance with the safe harbor guidelines for electronic distribution.

The Exchange Notice may be provided electronically if the requirements of the DOL's electronic disclosure safe harbor described in labor regulations (29 CFR 2520.104b-1(c)) are satisfied. Generally, this safe harbor allows disclosure through electronic media to employees:

- Who have the ability to effectively access documents furnished in electronic form at any location where the employee is reasonably expected to perform duties; or

- For whom access to the employer's electronic information system is an integral part of those duties.

Note: Employers relying on the electronic safe harbor must ensure that the system for furnishing documents results in actual receipt by the employee and must inform the employee of his or her right to request a paper version of the notice.

For questions about distributing this notice to employees, or any other questions related to the Affordable Care Act, please contact a member of the Firm's Health Reform group.