

Publications

Labor and Employment Alert: Notice of Coverage Options

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Summary: Employers must distribute a new Notice of Coverage Options to all employees (full-time and part-time, regardless of eligibility for benefits). The initial distribution of the Notice must be before October 1, 2013. Thereafter, the Notice must be given to each new employee within 14 days after work begins. The Department of Labor (DOL) published guidance ([Technical Release 2013-02](#)) on the Notice of Coverage Options and model Notices on May 8, 2013.

Who must send the Notice?

All employers are required to distribute a Notice of Coverage Options. The only exception is for employers that are exempt from the Fair Labor Standards Act (generally, very small entities). If you think you may be exempt from the FLSA, check the DOL's [FLSA compliance tool](#) or ask your Vorys employment attorney.

Who gets the Notice?

As an employer, you must send the Notice of Coverage Options to all employees (full-time and part-time, regardless of eligibility for benefits). You do not need to send the Notice to former employees, even if they continue to be enrolled in your health plan as retirees or COBRA beneficiaries.

When does the Notice need to be sent?

You must distribute the Notice of Coverage Options to current employees before October 1, 2013. On and after October 1, 2013, you must give the Notice to each new employee within 14 days after work begins.

The significance of October 1, 2013

On October 1, 2103, Marketplaces (formerly known as "Exchanges") are supposed to open in every state. A Marketplace is a website where consumers can shop for individual health insurance. Sixteen states (and the District of Columbia) will operate their own Marketplaces. In the

remaining 34 states (including Ohio), the federal government will operate the Marketplaces.

When an individual fills out an insurance application through a Marketplace, he or she can request a calculation as to whether he or she is eligible for premium assistance (advanceable tax credits from the federal government) to reduce the amount the individual would need to pay for health insurance. (Note that the premium assistance does not reduce monthly premiums paid to the insurer. Rather, if an individual is eligible for premium assistance, the federal government simply pays a portion of the monthly premiums to the insurer.)

How does that implicate you as an employer? Whether an employee can get premium assistance for the purchase of health insurance through a Marketplace depends on whether he or she is eligible for health coverage at work and, if coverage is offered at work, whether that coverage provides minimum value and is affordable. (See Vorys [Client Alert: Is Your Health Plan 'Affordable?'](#) for more information on minimum value and affordability.) The Marketplace needs to collect this information from the individual – and the federal government wants to the individual to get that information from the Notice of Coverage Options.

What does the Notice need to say?

Model Notices

The Department of Labor (DOL) published two model notices on May 8, 2013.

1. A three-page **model Notice** for employers that offer health coverage to at least some employees. The three-page model Notice is in two parts, Part A (one page) and Part B (two pages).
2. A two-page **model Notice** for those employers that do not offer health coverage to any employees.

Use of the DOL model Notices is optional. You could create your own Notice with just the minimum required elements. However, if you offer health coverage to some or all employees, you may want to include additional elements to help employees make good choices for health coverage – and to reduce future inquiries.

Mandatory Information

If you want to send a Notice with just the required elements, the Notice would need to include:

- Information about the Marketplace, including an explanation of the Marketplace, description of Marketplace services, and contact information for the Marketplace.
- A statement that, if the employer's plan does not provide minimum value, the employee may be eligible for premium assistance toward the purchase of health insurance through a Marketplace. In this context, we believe you should also include a statement as to whether your health coverage does in fact provide minimum value.
- A statement that, if the employee purchases health insurance through a Marketplace, the employee will: (1) lose the benefit of the employer's contribution toward the cost of coverage; and (2) have to pay premiums on an after-tax basis (as compared to pre-tax employee contributions for the employer's

plan).

Part A of the model Notice includes these elements, except that you would want to add a statement as to whether your health coverage provides minimum value.

Planning point: Part A of the sample Notice for employers that offer health coverage suggests that employees check their summary plan descriptions (SPDs) for more information. You may want to confirm, in advance of sending the Notice, that your SPD is up-to-date or that summaries of material modifications (explanations of changes to your SPD) are available). Remember that you can be penalized if you do not provide requested documents within 30 days of the request.

Optional Information

Part B of the model Notice includes optional elements. (Page 2 of Part B of the model Notice is identified as optional but all of Part B – other than the statement of minimum value – is optional.) Although Part B requires some thoughtful customization, you may want to include some or all of the optional elements, including:

1. Employer identification and contact information;
2. A brief explanation of the classes of employees who are eligible for health coverage;
3. Your health plan's definition of eligible dependents; and
4. Whether your health plan is intended to be affordable (i.e., cost no more than 9.5% of an employee's wages).

The optional elements are structured to correspond to the Marketplace insurance application. If an employee has your Notice (with the optional elements) in hand when he or she tackles a Marketplace insurance application, it is more likely he or she will make appropriate choices for his or her health coverage – and it is less likely the employee will contact you with questions. You may also want to consider addressing the expanded Medicaid program available in some states.

OTHER EMPLOYEE BENEFIT NEWS

Updated COBRA election notice

At the same time it published the model Notice of Coverage Options, the DOL updated its [model COBRA election notice](#). The DOL's old COBRA election notice included explained preexisting condition exclusions and why a qualified beneficiary may want to elect COBRA to avoid a gap in health coverage. The DOL has modified the narrative to reflect the elimination of preexisting condition limitations in 2014 and the opportunity to buy health insurance through a Marketplace without regard to health status and, potentially, with premium assistance. The DOL also published a [redlined version](#) of the model COBRA election notice so you can easily identify the changes. The revisions are drafted so that you may start using the updated COBRA election notice in 2013.

This alert is a summary and cannot include all details that may be relevant to your situation. As always, please contact us if you want more information on these developments or other employee benefits matters.