

LABOR AND EMPLOYMENT

Employers Must Now Furnish All Employees With Written Notice of their Rights Under the Affordable Care Act

By RICHARD S. ROSENBERG

In July, the Obama Administration has announced a one-year delay in the imposition of employer "shared responsibility" payments under the Affordable Care Act ("ACA"). Although the requirement for large employers to provide compliant health coverage or pay penalty assessments will be delayed until 2015, other ACA provisions remain on schedule.

The most immediate of these is the October 1, 2013 deadline for furnishing ALL employees with a written notice of their ability to purchase health insurance through the new Health Insurance Marketplace organized under the Act (formerly referred to as health insurance "Exchanges"). The notification requirement applies to all employers covered by the federal wage-hour law known as the Fair Labor Standards Act ("FLSA"), which generally includes businesses with annual sales of \$500,000 or more.

The October 1 deadline coincides with the beginning of an open enrollment period in which employees will be able to purchase policies through the Marketplace for coverage commencing in 2014. By law, covered employers must provide all employees with a written notice covering the following three topics:

1. the existence of a Health Insurance Marketplace through which they may purchase their own health care coverage,

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including information as to how and where they can obtain additional information about this option;

2. whether the employer provides health insurance in compliance with the law (or if the employer elects not to offer coverage, or provides sub-standard coverage, then how employees may be eligible for a tax credit to subsidize the purchase of their own insurance from the Marketplace); and

3. the fact that if employees elect to buy their own coverage through the Marketplace rather than participating in their employer's plan, they may lose the employer's premium contribution (if any) and/or the ability to pay their own share of the premium with pre-tax dollars.

Covered employers must provide this

notice by October 1st to ALL current employees, regardless of whether the employee is full-time or part-time, and thereafter to all new employees within 14 days of hire.

The notice may be delivered by hand or by first-class mail. It may also be sent electronically if electronic delivery is in compliance with U.S. Department of Labor ("DOL") electronic disclosure regulations. (The regulations generally allow electronic disclosures through an employer's electronic information system — e.g., an intranet site — to employees who access the system as an integral part of their duties.) Many employers will include the notice in their employee handbook and post a copy along with all of the other mandated employee notices.

The DOL has provided model notices which may be used — one for employers who have elected to "play" (i.e. to provide compliant health care coverage) and one for employers who have elected to "pay" and thus will not offer health care coverage. (Employers are also free to design their own notice as long as it includes the three basic notifications discussed above.)

The DOL model notice for employers that offer health coverage may be obtained at: <http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>. The notice includes an optional, additional section with which an employer can provide an employee with additional information as to

whether and when he or she will be eligible to participate in the employer's plan, whether the employer's plan meets ACA "minimum value" and "affordability" standards, and whether there are upcoming changes in the coverage offered by the employer. (Note: Employers who elect not to complete this additional section should omit the last sentence from the prior page which reads: "Here's the employer information you'll enter when you visit HealthCare.gov to find out if you can get a tax credit to lower your monthly premiums.")

The model notice for employers that do not offer health coverage to employees may be obtained at: <http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf>. Employers should also update COBRA notices to reflect the option to purchase insurance through the Marketplace. The DOL's updated model COBRA notice may be obtained at: <http://www.dol.gov/ebsa/cobra.html>.

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