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Labor & Employment Alert May 2013

Department of Labor Releases Model Notices on Health Insurance Marketplaces

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On May 8, 2013, The Department of Labor (“DOL”) released a model notice and guidance with regard to the requirement under the Affordable Care Act (“ACA”) that employers provide notices to employees about the state health care exchanges, also called Health Insurance Marketplaces (“Marketplaces”). Under the statute, employers were originally supposed to provide notices to employees of the existence of the Marketplaces and eligibility requirements for purchasing insurance through the Marketplaces by March 1, 2013. On January 24, 2013, however, DOL issued guidance delaying the deadline date until late summer or early fall 2013 to allow the government to issue further guidance and model notices. With the release of this model notice, DOL has set October 1, 2013, as the new deadline by which employers must provide the notices to existing employees.

The notice requirement applies to all employers covered under the Fair Labor Standards Act (“FLSA”). The FLSA applies to enterprises with one or more employees who engage in interstate commerce, produce goods for interstate commerce, or handle, sell, or work on goods or materials that have been moved in or produced for interstate commerce. Generally, the FLSA does not apply to employers with less than \$500,000 in annual dollar volume. The following entities, however, are covered regardless of their dollar volume of business: hospitals; institutions primarily engaged in the care of the sick, aged, mentally ill, or disabled who reside on the premises; schools for children who are mentally or physically disabled or gifted; preschools, elementary and secondary schools, and institutions of higher education; and federal, state, and local government agencies.

Employers covered under the FLSA must provide the notice to all employees whether or not they are enrolled in the employer’s health care plan and whether or not they are eligible for the employer’s health care plan. Employers, therefore, must provide the notice to all full-time and part-time employees. Employers are not required to provide separate notice to dependents or others who are or may become eligible for coverage under the plan.

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Notice to employees must provide notice of the existence of the Marketplace, such as the Health Care Connector in Massachusetts, a description of the services provided by the Marketplace, and contact information for the Marketplace. Employees are also to be notified about the possibility of a premium tax credit for purchase of insurance through the Marketplace. Finally, the notice must inform employees that they may lose any employer contribution to the employer’s group health plan if they purchase insurance through the Marketplace and that such employer contribution may be excludable from income for federal income tax purposes.

The DOL has produced model notices for employers who offer health care coverage and for those who do not offer health care coverage. Employers are not required to use the model notice, as long as the required information is provided. The model notices include all of the required information and a place for the employer to include information about its own coverage. Employers must adapt portions of the notice to meet their particular facts and circumstances, as well as providing information about the proper Marketplace. The DOL guidance indicates that employers may rely on the model notices for now and that additional guidance in this area may be forthcoming in the coming months. The model notices are available at www.dol.gov/ebsa/healthreform.

Notices must be provided to new employees hired on or after October 1, 2013, at the time of hiring. DOL has indicated that, for 2014, it will consider notice to new employees to be timely if provided within 14 days of the employee’s start date. Employers must provide the notice to current employees no later than October 1, 2013. The notice must be provided in writing and worded in a manner calculated to be understood by the average employee. It may be provided by first class mail or electronically if the DOL’s electronic disclosure safe harbor requirements are met.

DOL has also issued an updated COBRA election notice that informs qualified beneficiaries of coverage options available through the Marketplaces. Plan sponsors can find the updated COBRA election notice at www.dol.gov/ebsa/cobra.html.

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If you have any questions or concerns with regard to the implementation of the Act, please contact Katherine A. Hesse, Brian P. Fox or the attorney assigned to your account.

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