

## HEALTH CARE REFORM: DEPARTMENT OF LABOR ISSUES MODEL NOTICE OF EXCHANGE

The Affordable Care Act (ACA) requires employers to provide a Notice of Exchange (Notice) to employees regarding the availability of coverage on their state Exchange and their possible eligibility for government subsidies to assist with the purchase of health coverage from the Exchange. Originally, the Notice was to be delivered to employees no later than March 1, 2013, but this requirement was postponed “to late summer” to allow for further rulemaking and development of a model Notice for employers to use. Ahead of schedule, on May 8, 2013, the Department of Labor (DOL) issued a model Notice and provided guidance about its delivery.

### **DELIVERY OF THE NOTICE**

The Notice must be delivered to all employees, on an automatic basis and free of charge, no later than October 1, 2013, regardless of an employee’s plan enrollment status. The Notice must be provided to both full-time and part-time employees. There is no obligation to provide the Notice to non-employees, including individuals who may become employees at some future date.

### **CONTENT OF THE NOTICE**

The Notice must provide a description of the services offered by the relevant state Exchange along with contact information. Employees must be informed about the potential availability of premium tax credits to subsidize the purchase of health coverage from the Exchange and the availability of cost sharing reductions. Moreover, employees must be informed about the possibility of losing their employer contribution (and its tax advantages) if they purchase coverage from the Exchange.

### **STANDARD OF CARE**

The Notice must be provided in writing, in a manner calculated to be understood by the average employee. It may be provided by first-class mail but, alternatively, it may be provided electronically if the requirements of the DOL’s electronic disclosure safe harbor are satisfied as described in 29 CFR 2520.104b-1(c). After October 1, 2013, the Notice of Exchange must be provided to new employees within 14 days of their start date.

### **COBRA**

Election notices provided under the Consolidated Omnibus Budget Reconciliation Act (COBRA) will need to be revised to reflect the availability of coverage on the Exchange in lieu of COBRA. The goal is to make qualified beneficiaries aware of alternatives to COBRA that are available through an Exchange. In addition, qualified beneficiaries must be informed of the potential availability of premium tax credits to assist in paying for coverage purchased through the Exchange. The DOL has issued a model election notice that plans may use to satisfy the requirement to provide information about the Exchange. Use of the model election notice, appropriately completed, will be considered by the DOL to be good faith compliance with the election notice content requirements of COBRA.

## RESOURCES

More information and resources can be found through the following links:

- Details regarding the Notice of Exchange:  
<http://www.dol.gov/ebsa/newsroom/tr13-02.html>
- Model Notices:  
<http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>  
<http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf>
- A COBRA model election Notice:  
<http://www.dol.gov/ebsa/cobra.html>

If you have any questions regarding this or any other ACA related issue, please contact your Keenan representative.

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