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Guidance on the Notice to Employees of Coverage Options under Fair Labor Standards Act §18B and Updated Model Election Notice under the Consolidated Omnibus Budget Reconciliation Act of 1985

May 8, 2013

A. Employers Subject to the Notice Requirement

The FLSA section 18B requirement to provide a notice to employees of coverage options applies to employers to which the FLSA applies. In general, the FLSA applies to **employers that employ one or more employees** who are engaged in, or produce goods for, interstate commerce. For most firms, a test of not less than \$500,000 in annual dollar volume of business applies.(4) The FLSA also specifically covers the following entities: hospitals; institutions primarily engaged in the care of the sick, the 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.(5)

The Department's Wage and Hour Division provides guidance relating to the applicability of the FLSA in general including an internet compliance assistance tool to determine applicability of the FLSA. See www.dol.gov/elaws/esa/flsa/scope/screen24.asp.

B. Providing Notice to Employees

Employers **must provide a notice of coverage options to each employee**, regardless of plan enrollment status (if applicable) or of part-time or full-time status. Employers are not required to provide a separate notice to dependents or other individuals who are or may become eligible for coverage under the plan but who are not employees.

C. Form and Content of the Notice

Pursuant to the statute, the notice to inform employees of coverage options must include information regarding the existence of a new Marketplace as well as contact information and description of the services provided by a Marketplace. The notice must also inform the employee that the employee may be eligible for a premium tax credit under section 36B of the Code if the employee purchases a qualified health plan through the Marketplace; and a statement informing the employee that if the employee purchases a qualified health plan through the Marketplace, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.

D. Timing and Delivery of Notice

Employers are required to provide the notice to each new employee at the time of hiring beginning October 1, 2013. For 2014, the Department will consider a notice to be provided at the time of hiring if the notice is provided within 14 days of an employee's start date.

With respect to employees who are current employees **before October 1, 2013**, employers are required to provide the notice not later than October 1, 2013. The notice is required to be provided automatically, free of charge.

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. Alternatively, it may be provided electronically if the requirements of the Department of Labor's electronic disclosure safe harbor at 29 CFR 2520.104b-1(c) are met.

<http://www.dol.gov/ebsa/newsroom/tr13-02.html>

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