

Department Of Labor Releases Technical Guidance For Employers Relating To Notice To Employees Of Health Coverage Options Under FLSA Sec. 18B, As Well As Updated COBRA Election Notice

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The U.S. Department of Labor Employee Benefits Security Administration (EBSA) recently issued [Technical Release 2013-02](#), in which it provides employers with temporary guidance regarding the notice that must be provided to employees in relation to health care coverage options that will soon be available pursuant to Section 18B of the Fair Labor Standards Act (FLSA).

Specifically, beginning on Jan. 1, 2014, individuals and employees of small businesses will have access to coverage through a private health insurance market (referred to as the Health Insurance Marketplace), which shall provide a one-stop comparison of private health insurance options. With open enrollment for health insurance coverage through this Marketplace slated to occur beginning on Oct. 1, 2013, the EBSA received several requests from employers on the model notices that must be provided to employees in relation to these new options.

To address these inquiries, Technical Release 2013-02 spells out which employers are subject to the Notice Requirements (namely, any employer to which the FLSA applies) and mandates that employers must provide a notice of coverage options to all employees, irrespective of plan enrollment status or whether the employee is a part-time or full-time employee. The guidance clarifies that employers need not provide a separate notice to dependents or other individuals who are or may become eligible under the plan, but who are not employees. The guidance also provides a general overview of information to be contained in the notice, as well as a link to the [model forms recommended by the EBSA for employer use](#). As part of these forms, the EBSA offers a [Model COBRA Election Notice](#) that incorporates reference to options available through the Health Insurance Marketplace.

As the requirements in terms of timing of required notices has been in a state of flux over the past few months, the EBSA further has clarified that employers are required to provide the notices to each new employee at the time of hiring beginning Oct. 1, 2013, or for current employees, by no later than Oct. 1, 2013. Beginning in 2014, the EBSA will consider notice to be provided at the time of hiring so long as it is provided within 14 days of the employee's start date. All notices provided must be provided in writing in a manner calculated to be understood by the average employee and may be provided via first-class mail (or electronically, provided that the Department of

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Labor's electronic disclosure safe harbor requirements are met).

The information and links provided by the EBSA serve as a useful tool to ensure compliance and timely notice to employees in the wake of these changing health care coverage options. Accordingly, all employers covered by the FLSA are encouraged to take note of the guidance issued and model forms/language available through the EBSA.