

UPDATE: HEALTH INSURANCE MARKETPLACE NOTICE: RELAX!...BUT DON'T PLAY DEAD

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Health care reform created a new Section 18B of the Fair Labor Standards Act ("FLSA") to require employers to furnish notice of the coverage options available through Health Insurance Marketplace to employees. The Secretary of Labor delegated responsibility for regulations under the new law to the Department of Labor's Employee Benefits Security Administration ("EBSA").

The new notice requirement was to take effect on March 1, 2013. However, in a set of FAQs published on January 24, 2013, the EBSA concluded that the notice requirement should be delayed for several reasons. The EBSA anticipated that distribution of the notices would take place in the late summer or fall of 2013, which would coordinate with the open enrollment period for Exchanges (see our [earlier post](#)).

On May 8 2013, the EBSA published Technical Release 2013-02, which offered guidance on various aspects of the marketplace notice, including the required content, timing and delivery of the notice. Under the guidance, employers are required to provide the marketplace notice to current employees before October 1, 2013, by first-class mail or electronically according to the DOL's electronic disclosure safe harbor. The Release also included two model marketplace notices (see our other [earlier post](#)).

Earlier this month, the EBSA issued its sixteenth set of FAQs on health care reform and confirmed that an employer will have satisfied its notice obligation if another party provides a timely and complete notice. The FAQs also contained a cautionary reminder that all employees must receive the notice and that an employer is not relieved of its obligation to provide notice if another entity sends the notice to only participants enrolled in the plan (see our recent [post](#)).

Now less than 30 days before the October 1, 2013 compliance deadline, EBSA has issued a single FAQ confirming that there is no fine or penalty under the law for an employer's failure to provide the marketplace notice to its employees. However, we do not wish to encourage noncompliance. In fact, it is our understanding that a representative from EBSA has informally commented that employers should not interpret the FAQ as meaning there will be no adverse consequences for failing to provide the marketplace notice to employees. Therefore, while the FAQ states that there

will be no fines or penalties for failing to provide the notice, employers should still endeavor to comply to avoid other potential adverse consequences (whatever those may be).

MEET THE TEAM



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