

NOTICE OF EXCHANGES AND SUBSIDIES: FAQs

Question 1: What is the main purpose of this Notice?

Answer 1: The Exchanges (or Marketplaces) are scheduled to open in the fall of 2013. When this occurs, individuals may opt to shop in them for health insurance coverage. Some individuals may be eligible for a premium subsidy through the federal government. Whether an individual is eligible for a premium subsidy will depend in part on the coverage available to that individual through his or her employer. The Exchange/Marketplace needs to collect this information from the individual requesting a quote for coverage, and the federal government wants the individual to get that information from this Notice provided by the employer. In fact, the numbering of items on the Notice is intended to directly correspond to the way items will be numbered on the application in the Exchange/Marketplace.

Question 2: What is the deadline for distributing the Notice of Exchanges and Subsidies?

Answer 2: All employers are required to distribute the Notice of Exchanges and Subsidies by October 1, 2013. Then, for employees hired on or after October 1, the employer must supply the Notice at the time of hire. According to the Department of Labor's guidance, employers satisfy this obligation if they provide the Notice within 14 days after the new employee's actual start date.

Question 3: There are two Notices, which one should we use?

Answer 3: One Notice is for employers that do not offer an employer-sponsored health plan, and will also not be offering one in 2014. The other Notice is for employers who do offer an employer-sponsored health plan to some or all employees.

Question 4: Where can I find the model Notices?

Answer 4: For employers that provide coverage to their employees: <http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>
For employers that do not provide coverage to their employees: <http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf>

Question 5: We have a management carve-out plan in which we only offer health insurance coverage to managers. Which Notice should we use?

Answer 5: For all employees, regardless of their health insurance eligibility status, you must use the Notice for employers who offer an employer-sponsored health plan.

Question 6: We are a very small business with only four employees. Are we required to distribute the Notice of Exchanges and Subsidies to each employee?

Answer 6: The Notice obligation applies only to employers subject to the federal Fair Labor Standards Act (FLSA), which includes almost all U.S. employers. The FLSA applies to:

- Employees of any enterprise engaged in interstate commerce;
- Employees of any enterprise engaged in the production of goods for interstate commerce; or
- Employees of an enterprise with annual revenues exceeding \$500,000.

If your business meets any one of these three criteria, you are required to distribute the Notices.

Question 7: We do not provide health insurance. Are we required to distribute the Notice of Exchanges and Subsidies to each employee?

Answer 7: Yes, you must provide the Notice for employers who do not sponsor a group health insurance plan.

Question 8: Are we required to distribute the Notice of Exchanges and Subsidies to part-time employees? What about seasonal employees?

Answer 8: Yes and yes. You are required to provide the Notice to all W-2 employees, regardless of their status or classification.

Question 9: Do we have to provide the Notice to employees who are not eligible for our company-sponsored health insurance plan?

Answer 9: Yes.

Question 10: Do we have to provide Notices to 1099 independent contractors who contract with our company?

Answer 10: No, the Notice is only required for W-2 employees.

Question 11: Do we have to provide the Notice to former employees who are currently enrolled in COBRA coverage?

Answer 11: No, you are only required to distribute the Notices to current employees.

Question 12: May we provide the Notices via e-mail?

Answer 12: Yes, however if you select this delivery method, you must comply with the requirements of the Department of Labor's electronic disclosure safe harbor delineated in 29 CFR 2520.104b-1(c). Basically, these requirements require the following:

- The employer has the employee's consent prior to sending the Notice electronically, unless the employee has the ability to access electronic documents at work, and accessing electronic documents at work is an integral part of the employee's work duties. (The DOL has specifically disapproved of the use of common kiosks or computer stations where employees can access the Notice.)
- The employer must communicate that the employee's consent to receive the Notice electronically may be withdrawn at any time without consequence to the employee, and the employer must inform the employee of how to withdraw consent.
- The employer must inform the employee that he or she may receive a paper copy upon request without charge.
- The employer must take appropriate measures to ensure that the employee actually receives the document. This may be accomplished by using return receipt or notice of undelivered e-mail features, or some other reasonable method.
- The employer must take care to protect the confidentiality of personal information.
- The employer must ensure that the Notice is consistent with the content requirements of the Notice.
- The employee must be notified of the significance of the document. (For example, the body of the e-mail may state: *"Please see the attached Employee Notice of Coverage Options. This Notice contains important information regarding Health Insurance Marketplaces, Premium Subsidies that may be available to you, and details regarding your health insurance plan. Please read this Notice carefully."*)

Question 13: Our health plan offers coverage to spouses and children of our employees. Do we have to provide the Notice to these dependents as well?

Answer 13: No, you are only required to provide the Notices to employees.

Question 14: Do I have to mail the Notices, or can I just hand them out at work?

Answer 14: You are not required to mail the Notices. Instead, you may opt to hand-deliver them. While it is not required by statute, it is a best practice to require each employee to sign a form acknowledging receipt.

Question 15: My employees have many questions regarding whether they will face fines for not having insurance in 2014, how the Exchange/Marketplace will work, and other issues surrounding the individual mandate. Should I attempt to research and answer these questions for my employees?

Answer 15: No, we do not recommend doing so, as incorrect answers may expose your company to liability. Instead, we recommend directing the employee to the website listed in the Notice (HealthCare.gov). Also, you may want to direct the employee to their personal accounting/tax professional, as their tax professional would be in the best position to answer questions regarding whether the employee may be subject to an individual mandate fine or may be eligible for premium assistance. However, you may encourage the employee to take the Notice with him or her when consulting with a tax professional or going to the website, as the information provided by the employer in the Notice may affect the employee's options.

Question 16: In completing the Notice, how do I know if the health plan that we offer will meet the "minimum value standard?" (This is asked in Part B of the Notice in Item #14.)

Answer 16: The best way to determine if your health plan meets the "minimum value standard" is to simply ask your health insurance broker or carrier. The "minimum value standard" refers exclusively to the health insurance plan design, not how much the employer contributes to the plan. In order to offer a health plan that satisfies this requirement, the health insurance carrier must pay for at least 60% of treatment costs, commonly referred to as a health plan with a 60% actuarial minimum value. In the coming months, you will probably hear this level of plan referred to as a "bronze level" plan. So we recommend simply asking your health plan broker or carrier if your health plan is a bronze level or richer plan. It is important to note that the employer mandate has been postponed to 1/1/2015, so employers will not face penalties for failing to provide a plan that meets the minimum value standard in 2014.

Question 17: When we fill out the Notice, how do we know if our current plan is "intended to be affordable to the employee?"

Answer 17: According to the relevant guidelines, your plan offers "affordable" coverage if the company contributes a certain amount towards the employee-only premium cost. It is a common misconception that affordable coverage is determined by the employer contributing a specific percentage to each employee's health insurance plan (such as 50%, 60% or 75%). Rather, affordable coverage means that the company contributes enough so that the employee's portion of the premium for employee-only coverage is no more than 9.5% of the employee's total household income. Since employers generally do not know an employee's total household income, there is a rule in place for 2014 stating that employees have access to "affordable coverage" as long as the employee's portion of the premium for single coverage for a qualifying plan is equal to or less than 9.5% of the employee's W-2 wages. It

is important to note that the employer mandate has been postponed to 1/1/2015, so employers will not face penalties for failing to provide health coverage that is intended to be affordable in 2014.

Question 18: I do not like the language in these model Notices published by the Department of Labor. May I create my own Notice for employees?

Answer 18: Yes, you may opt to create your own Notices in this regard as long as they comply with the numerous requirements delineated by the US Department of Labor (DOL). Should you opt to do so, we highly recommend having your legal counsel review it prior to distribution. The federal government will consider using the model Notices published by the DOL as good faith compliance with the Notice content requirements.

Question 19: In the past few years I have heard a great deal about Health Insurance Exchanges. However, the Notice consistently refers to a "Health Insurance Marketplace." Is this the same thing?

Answer 19: Yes, the US Department of Health and Human Services (HHS) has recently decided to refer to the Exchanges in each state as the "Health Insurance Marketplace."

Question 20: You call this the Notice of Exchanges and Subsidies; however, the DOL is calling this the "Employee Notice of Coverage Options." Are these the same Notice requirements?

Answer 20: Yes, the original Health Care Reform Acts referred to this requirement as the "Notice of Exchanges and Subsidies." However, when the model Notice was published, it was entitled the "Employee Notice of Coverage Options." However, both of these terms refer to the same Notice requirement.

Legal Disclaimer: The Notice of Exchanges and Subsidies FAQs is intended for informational purposes only and by no means should replace or substitute other legal documents (governmental or non-governmental) reflecting similar content or advice. In addition, these new law provisions are expected have on-going updates. If you have any questions concerning your situation or the information provided, please consult with an attorney or an HR Professional. (Rev. 5/2013)