Notice Requirements of Health Insurance Marketplace

Effective January 1, 2014, individuals may purchase health insurance on a "Health Insurance Marketplace" (also referred to as "Exchange") which is expected to be set up in each state. Open enrollment for coverage through a Marketplace begins on October 1, 2013 for effective dates starting January 1, 2014. By October 1, 2013, all employers subject to the Fair Labor Standards Act ("FLSA") must provide a Notice to employees informing them of the option to purchase health insurance coverage in a Marketplace.

- A Notice must be provided to all employees, including part-timers whether or not they have access to employer-provided health coverage. The Notice does not have to be provided to dependents or former employees even if they continue to have coverage (i.e. through COBRA or retiree benefits).
- Employees hired before October 1st must receive the Notice by October 1, 2013. New employees hired on or after October 1st must receive the Notice within 14 days of their date of hire.
- The Marketplace Notice must be provided automatically and free of charge in a manner calculated to be understood by the average employee. The Marketplace Notice may be delivered via first-class mail. They may also be delivered electronically if the employee can effectively access electronic documents at his/her worksite and the use of the employer's electronic information system is an integral part of his/her job.

While not mandatory, employers may want to provide the information requested on the first page of part B (page 2) — in particular, the employer identification number and contact information and the plan eligibility and dependent coverage information. However, instead of an extensive description of eligibility information in the notice, the employer may want to cross-reference such information in its summary plan description, SPD, or enrollment materials.

Also on page 2, the employer will indicate if the plan meets minimum value and intends to be affordable:

> An employer sponsored health plan meets the "minimum value standard" if the plan's share of the total allowed benefit costs covered by the plan is no less than 60 percent of such costs.
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> An employer who intends to offer coverage which is deemed "affordable", based on employee wages, the employee's share of the cost for the lowest-cost plan must not be greater than the 9.5% of the employee's wages. This calculation is one of 3 different safe harbors for determining affordability. Call us to understand which of these may be simplest to apply for your employee population.

The second page of part B (page 3) requests *optional* information that corresponds to the information an employee must provide when enrolling for coverage through the marketplace and will assist employees in evaluating their coverage choices. Although providing the information requested on the second page of part B may not be practical for many employers since it requires individualized information, it may help employees understand their coverage choices and reduce the number of employee questions.

Some employers may want to include a cover letter that puts the Notice in context. For example, employers may want to make it clear that this Notice is required by law, and that employees covered by the group health plan do not need to enroll in the Marketplace. Employers may also want to inform employees that if they purchase insurance through a Marketplace, they will lose any employer contribution for employer-provided health insurance, and those premiums they pay for Marketplace coverage will be on an after-tax basis.

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