

CLIENT ALERT

Brought to you by:



**PLEASE READ
TIME SENSITIVE MATERIAL**

ALL EMPLOYERS WHO ARE SUBJECT TO THE FAIR LABOR STANDARDS ACT ARE REQUIRED TO PROVIDE A NOTICE REGARDING THE NEW MARKETPLACE TO ALL EMPLOYEES

This Client Alert will walk you through the steps you need to take, beginning with determining if you are an employer subject to the FLSA.

Step 1. Are you an employer subject to the FLSA?

- NO – STOP READING – This does not apply to you
- YES – Skip to Step 3
- I'M NOT SURE – Go to Step 2.

Step 2. Determine if you are an employer subject to FLSA – In general the following are:

- A Federal, state, or local government agency
- A hospital; or an institution primarily engaged in the care of the sick, the aged, or the mentally ill or developmentally disabled who live on the premises; (it does not matter if the hospital or institution is public or private or is operated for profit or not-for-profit)
- A pre-school; elementary or secondary school or institution of higher learning (e.g., college); or a school for mentally or physically handicapped or gifted children (it does not matter if the school or institution is public or private or operated for profit or not for profit)
- A company/organization with annual dollar volume of sales or receipts in the amount of \$500,000 or more

Still not sure? Access the government's elaw advisor page at <http://www.dol.gov/elaws/esa/flsa/scope/screen24.asp>

Are you an employer subject to the FLSA?

- NO – STOP READING – This does not apply to you
- YES – Go to next step

Step 3 Do you provide Health Coverage?

- NO – Skip to Step 7
- YES – Go to Step 4

Step 4

The Employer is required to provide ALL employees with a notice about the Marketplace by October 1, 2013. This notice must be provided to all part-time and full-time employees, regardless as to whether they are eligible to participate in the health plan. In addition, any new hire after October 1, 2013, must be provided with this notice within 14 days of hire. The notice must be in writing, but may be provided electronically if the DOL's electronic disclosure safe harbor is met (29 CFR 2520.104b-1(c)).

The DOL has issued a Model Notice which is attached both as a completed sample as well as a blank notice that you may use.

DISTRIBUTION INSTRUCTIONS - While no instructions were specifically given for distribution, the notice must be in writing and the DOL has stated that the notice may be provided by first-class mail or electronically as long as the DOL's electronic disclosure safe harbor is met. (see below) We advise you not to hand these out but mail them if you cannot meet the requirements for electronic disclosure. <http://www.dol.gov/ebsa/newsroom/tr11-03.html>.

With regard to the use of electronic media generally, the Department has issued a regulation, at 29 CFR 2520.104b-1(c), setting forth conditions under which a plan administrator will be deemed to satisfy the requirement, in section 2520.104b-1(b)(1), that disclosures under title I of the Employee Retirement Income Security Act of 1974 (ERISA) must be furnished using "measures reasonably calculated to ensure actual receipt of the material." The safe harbor of section 2520.104b-1(c) is limited to individuals who meet the requirements of one of the following classifications:

***Integral Part of Duties.** The safe harbor applies to participants who have the ability to effectively access documents furnished in electronic form at any location where the participant is reasonably expected to perform his or her duties as an employee and with respect to whom access to the employer's or plan sponsor's electronic information system is an integral part of those duties. See 29 CFR 2520.104b-1(c)(2)(i).*

***Affirmative Consent.** The safe harbor also applies to other participants (e.g., retirees, former employees, and active employees who do not use a computer as an integral part of their duties), beneficiaries (e.g., surviving spouse, alternate payees), and other persons entitled to disclosures under title I of ERISA who affirmatively consent to receiving disclosures through electronic media in the manner prescribed by the regulation. See 29 CFR 2520.104b-1(c)(2)(ii).*

Step 5

The Model Notice is three pages long. Note that the third page is OPTIONAL. If you decide to complete the optional section you will have to prepare a separate form for each employee.

Completing the Notice

- Ø Page 1 – Under How Can I Get More Information – add the person's name and phone number who handles employee benefits or if there are multiple individuals, you may use a general title such as Human Resources Department, with a phone number.
- Ø Page 2 - Items 3-12 are demographic information about your company that must be completed
- Ø Page 2 – Under Here is some Basic information about health coverage offered by this employer:
- Ø 1. Check off whether you offer coverage to All Employees or Some Employees. If you check Some Employees, you must define who is eligible. The ideal place to find the correct wording is in your Master Policy from the insurance Company under the Eligibility Section.
- Ø 2. Check off whether you offer coverage to Dependents or not. If you do offer coverage to dependents, you must define who is eligible. The ideal place to find the correct wording is in your Master Policy from the insurance Company under the Dependent Eligibility Section.

Step 6

Check the appropriate box if your coverage meets the Minimum Value Standard and you intend for the coverage to be affordable. Assistance in defining Minimum Value Standard and Affordability:

MINIMUM VALUE STANDARD

- ☑ The coverage must provide coverage that has a 60% actuarial value. (On Average - For every \$1.00 in claims, \$0.60 paid out as reimbursement)
 - > The plan must cover 60% of all essential benefits to qualify
 - > Contact CHB Group if you are concerned about the MVS of your group.
 - > Actuarial Calculators can be found at - <http://www.cms.gov/ccio/index.html>

DEFINING "AFFORDABLE"

- ☑ A plan is considered affordable when the employee's contribution is not more than 9.5% of household income for employee only coverage for the lowest cost option provided by the employer that meets the minimum value requirement (60% coverage). Because employers do not know an employee's household income, the Notice requires you to state whether coverage is affordable based on an employee's wages. You may use one of three safe harbors to determine affordability.

SAFE HARBORS

1. Employee only contribution cannot be more than 9.5% of employees W-2 income (Box1) - Note that Box 1 will include such income items as overtime, commissions and bonuses but will also be reduced for certain things like pre-tax deductions.
EXAMPLE: Calculate your maximum bi-weekly contribution – [Lowest Box 1 amount from your W-2's] X .095/26 = maximum bi-weekly contribution and still offer affordable coverage.
2. Employee only contribution cannot be more than 9.5% of rate of pay. (employee's hourly rate X 130 hours = monthly pay) You may not use more than 130 hours under this safe harbor.
3. Employee only contribution cannot be more than 9.5% of Federal Poverty Level for a single individual
 - > Current Federal Poverty Level is \$11,490 x .095 = 1091.55/12 = \$90.96 per month

You're DONE!! (step 7 is for employers who do not offer coverage)

Step 7 - Even if you do not offer a health plan to your employees, you must provide them with a Notice. The Employer is required to provide ALL employees, including part time and full time employees, with a notice about the Marketplace by October 1, 2013. In addition, any new hire after October 1, 2013, must be provided with this notice within 14 days of hire. The notice must be in writing, but may be provided electronically if the DOL's electronic disclosure safe harbor is met (29 CFR 2520.104b-1(c)).

The DOL has issued a Model Notice which is attached. Complete Items 3-12 (demographic information about your company) on Page 2.

Please refer to DISTRIBUTION INSTRUCTIONS in step 4 for additional distribution guidance.

You're DONE!!

Additional Information regarding the Model Notices can be found at:

<http://www.dol.gov/ebsa/newsroom/tr13-02.html> Technical Notice
<http://www.dol.gov/ebsa/faqs/faq-noticeofcoverageoptions.html> FAQ

<http://www.dol.gov/ebsa/pdf/FLSAwithplanssp.pdf> Model Notice in Spanish for employers with plans
<http://www.dol.gov/ebsa/pdf/FLSAwithoutplanssp.pdf> Model Notice in Spanish for employers who do not offer plans

***DISCLAIMER** - This e-mail is informational only and should not be construed as insurance, legal or tax advice. If you would like more information, please do not hesitate to contact our office, your legal counsel or accountant.*