

## Employers Must Comply with Exchange Notice Requirements by October 1, 2013: DOL Issues Model Notice and Updated COBRA Election Notice

Employers are required under the Affordable Care Act to notify employees of health coverage options available through health care exchanges commencing October 1, 2013. On May 8, 2013, the DOL issued temporary guidance and a temporary model notice to help employers comply with this requirement.

The DOL guidance also provides an updated model COBRA election notice for group health plans. The updated notice informs qualified beneficiaries of the availability of alternatives to COBRA continuation coverage that are available through health care exchanges.

### Model Exchange Notices

Beginning January 1, 2014, individuals and small businesses will be able to enroll in health coverage through government-run health insurance exchanges (the "Marketplace"). The Affordable Care Act requires that employers subject to the Fair Labor Standards Act ("FLSA") provide to each of their employees, and to all new employees, a written notice regarding the availability of the Marketplace. In general, the FLSA applies to employers that employ one or more employees who are engaged in, or produce goods for interstate commerce. The FLSA also applies to all federal, state and local government agencies and to specific enumerated entities. Information on the applicability of the FLSA to an employer can be found on the DOL's website: <http://www.dol.gov/elaws/esa/flsa/scope/screen24.asp>.

The temporary guidance issued by the DOL makes clear that employers must provide this notice to all employees, regardless of eligibility for any employer-sponsored benefits or of part-time or full-time status. The DOL has issued two model notices that employers can use to satisfy this notice requirement. One model is for employers who do not offer a health plan and the other model is for employers who offer a health plan for some or all employees. The model notices can be found on the DOL's website: <http://www.dol.gov/ebsa/healthreform/>.

Open enrollment for purchasing health insurance coverage through the Marketplace begins October 1, 2013. Accordingly, the temporary guidance issued by the DOL requires employers to provide the notice to current employees by October 1, 2013 and,

beginning October 1, 2013, to all new employees at the time of hire (i.e., within 14 days of an employee's start date). The notice may be provided by first-class mail or, alternatively, it may be provided electronically if the DOL's electronic disclosure safe harbor requirements are met.

Employers are permitted to use the model notices to satisfy their notice requirements and rely upon the temporary guidance until the DOL promulgates regulations or other guidance.

#### Updated COBRA Election Notice

Under COBRA, an individual who was covered by a group health plan on the day before a qualifying event occurs must be able to elect COBRA continuation coverage. An individual with this right is called a qualified beneficiary. Qualified beneficiaries must be provided with an election notice that describes their rights to COBRA continuation coverage. The DOL has a model election notice that plans may use to satisfy the election notice requirements.

As a part of the guidance issued by the DOL on May 8, 2013, the DOL issued an updated model election notice. The notice has been revised to inform qualified beneficiaries of alternatives to COBRA continuation coverage available through the Marketplace. The model election notice is available in electronic form on the DOL's website: <http://www.dol.gov/ebsa/cobra.html>. Use of the model election notice, appropriately completed, will constitute good faith compliance with the COBRA election notice content requirements.

For more information, please contact:

**Alison E. Wright**, Partner  
415-995-5083  
[awright@hansonbridgett.com](mailto:awright@hansonbridgett.com)