



## **New Notice Requirements Regarding Health Insurance Exchanges and COBRA**

On May 8, 2013, the U.S. Department of Labor (DOL) issued Technical Release No. 2013-02, announcing an updated model election notice that plans must inform departing employees about continued health care coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

The release also announced that the DOL has issued long-awaited temporary guidance and a temporary Model Notice to Employees of Coverage Options about the soon-to-launch exchanges, as required under Fair Labor Standards Act (FLSA) section 18B. The exchange notification, which must be provided to current and all newly hired employees starting no later than October 1, 2013, is one of many health care reform requirements that may have fallen below the radar of many employers.

The DOL's primary intent behind the change is to inform potential COBRA participants of alternatives to COBRA coverage that may be available in the Health Exchange Marketplace.

### **Pre-Existing Condition Exclusion Rule – Language Removed from Model Notice**

- Pre-existing condition exclusions are prohibited for all enrollees for Plan Years beginning on and after January 1, 2014.
- A break in coverage may not limit the pre-existing condition exclusionary period.
- Individuals are no longer required to exhaust COBRA coverage in order to purchase individual health insurance policies without pre-existing condition exclusion.

### **Health Coverage Tax Credit – Phase Out**

The update also removed language relating to the tax credit available through the Trade Act of 2002 that expires at the end of 2013. Under this Act, a tax credit could be issued to certain individuals that became eligible for trade adjustment assistance and certain retirees receiving pension payments by the Pension Benefit Guaranty Corporation (PBGC).

### **New Forms and Employer Guidance**

The COBRA Model Election Notice is available in modifiable electronic form, along with a “Redline version” of the prior model notice that shows the changes that were made. The notices and related information can be found on the DOL's COBRA Continuation Coverage webpage: <http://www.dol.gov/ebsa/cobra.html>

The DOL has issued two model notices:

[Model notice for employers who offer employer-provided health insurance](#)

[Model notice for employers who do not offer employer-provided health insurance](#)

**Note:** Currently all Massachusetts businesses with 11 or more full-time-equivalent employees must offer Section 125 plans.



### Next Steps for Employers

- All employers who employ one or more employees and are subject to the Fair Labor Standards Act ("FLSA") must provide a new notice to employees no later than October 1, 2013, regarding the availability of health coverage under the Health Insurance Exchange, also referred to as the Health Insurance Marketplace. Employees hired after October 1, 2013, must be given the notice within 14 days after their start date.
- If you are an HR Knowledge client that currently utilizes an HR Knowledge COBRA third-party vendor for your COBRA administration, there is no requirement for you to do anything at this time. Our vendors will keep clients informed of the requirements as we approach the October deadline.
- Employers that administer their COBRA in-house will need to use the revised versions of the Model Notice beginning on October 1, 2013.
- Employers need to determine how the notice will be distributed or whether it will be incorporated with open enrollment materials. If you wish to send the notice electronically, confirm that you satisfy DOL electronic delivery requirements for all employees who must receive the notice.

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