

Summary Information on the Notice to Employees of Coverage Options under Fair Labor Standards Act § 18B and Updated Model Election Notice under the Consolidated Omnibus Budget Reconciliation Act of 1985.

Section 1512 of the Affordable Care Act (ACA) creates a new Fair Labor Standards Act (FLSA) section 18B **requiring a notice to employees of coverage options available through the Marketplace**. On May 8, 2013 the U.S. Department of Labor issued **Technical Release 2013-02**. This is a brief summary of the information contained in the Technical Release. Go to: <http://www.dol.gov/ebsa/pdf/tr13-02.pdf> to read the complete Technical Release.

Information on the Notice to Inform Employees of Coverage Options under FLSA

The notification is by letter to current employees and should be sent now if as the employer you have not sent the notice to your current employees. For new employees the notification must be made within 14 days of starting work. The date noted in the Technical Release 2013-02 was fall of 2013, which coordinated with the open enrollment period for the Marketplace. The written notice must contain the following information.

1. The employees must be notified of the existence of the Marketplace including what services are provided by the Marketplace and how the employees can contact the Marketplace to request assistance;
2. Notify the employee they may be eligible for a premium tax credit under section 36B of the Internal Revenue Code if the employee purchases a qualified health plan (QHP) through the Marketplace; and
3. Let the employee know if they purchase a QHP through the Marketplace, the employee may lose the employer contribution amount to any health benefits plan offered by the employer and that all or a portion of such contribution may be excluded from income for Federal and State income tax purposes.

Employers Subject to the Notice Requirement

The FLSA applies to employers that employ one or more employees who participate in, or produce goods for interstate commerce. FLSA provides an internet compliance tool to determine applicability of the FLSA. Go to <http://www.dol.gov/elaws/esa/flsa/scope/screen24.asp> to see if the business or the employees are included under FLSA.

The notice must be provided in writing and understood by the average employee. It must be provided by first-class mail or it may be provided electronically if it meets the requirements of the Department of Labor's electronic disclosure safe harbor at 29 CFR 2520.104b-1(c).

There is model language available on the Department of Labor's website: <http://www.dol.gov/ebsa/healthreform/>. There are two models available, one for employers who do not offer a health plan or one for employers who offer a health plan to some or all employees. Employers can use one of the models available or a modified version, provided the notice meets the content requirements described above.

Updated Model for the COBRA Election Notice

There is also an updated model election notice for group health plans for purposes of the continuation coverage provisions under Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to include additional information on health coverage offered through the Marketplace.

The notice is available in modifiable electronic form on the Departments website at: <http://www.dol.gov/ebsa/cobra.html>. A redline version is available from the prior model notice to help interested parties identify the changes. A clean copy is also available.

For additional information for employers regarding the ACA go to www.healthcare.gov and www.dol.gov/ebsa/healthreform