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Employee Notice About Health Insurance Marketplaces Due By October 1

Although the effective date of the Affordable Care Act's ("ACA") employer "play or pay" mandate was postponed this past July by the Obama Administration, one ACA requirement that affects employers continues to apply: the requirement to provide notice to employees about the health insurance marketplaces (the "Marketplace"). **By October 1, 2013**¹, virtually all employers are required to notify their employees (even part time, temporary and non-enrolled employees) in writing:

- (1) of the existence of the Marketplace, including contact information and a description of the Marketplace;
- (2) that the employee may be eligible for a premium tax credit if he or she buys insurance through the Marketplace; and
- (3) that, if the employee buys insurance through the Marketplace, the employee may lose any employer contribution to his or her health benefits, which contribution may be excludable from federal income tax.

Earlier this year, the Department of Labor issued a model notice to help employers meet this notice obligation. The model notice, which is available at <http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>, is three pages, and includes the statutorily-required information listed above, as well as information about the employer's own health insurance plan. There is a separate model notice for any employer that does not sponsor a health insurance plan for its employees. Because the "play or pay" penalties have been delayed, employers should not use the third page, which the Department of Labor has designated as optional, at this time.

¹ The effective date of the requirement is October 1, 2013 for current employees or within 14 days of an employee's hire date for employees commencing employment after October 1, 2013. The notice must be written in a manner calculated to be understood by the average employee. It may be provided by first-class mail, or alternatively, it may be provided electronically if the requirements of the Department of Labor's electronic disclosure safe harbor rules are met.



Some commentators have suggested that, for this year, the second page of the model notice is also optional, even though the Department of Labor has not designated it as such, and that an employer can satisfy its notice obligation by providing only the first page of the model notice. While the Department of Labor has not formally addressed this approach, we note that the first page of the model notice addresses all of the topics required by the statute (as listed above), and is administratively easier for employers to complete.

Questions or Assistance?

Should you have any questions about this alert, please contact any member of Shipman & Goodwin's [Pension and Employee Benefits Practice Group](#).

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