JULY 15, 2013

HEALTH INSURANCE MARKETPLACE EMPLOYEE NOTICE REQUIREMENT

Expanded access to health coverage for employees and other individuals under the Affordable Care Act ("ACA") is set to take effect in January of 2014. However, employers should be aware that certain provisions of the Act require more immediate action on their part. More specifically, employers are required to provide notice to employees of tax implications with certain coverage options and details of the Health Insurance Exchange ("Marketplace"). The Marketplace offers employees and other individuals a "one-stop shop" to find and compare a variety of health insurance coverage options. Open enrollment and access to the Marketplace for purchasers of health insurance coverage begins October 1. Information regarding the employee notice requirement is detailed below.

WHICH EMPLOYERS ARE SUBJECT TO THE NOTICE REQUIREMENT?

The notice requirement applies to all employers who are subject to the Fair Labor Standards Act. Generally, this includes employers that have $500,000 in annual dollar volume of business and who are engaged in, or produce goods for, interstate commerce. Also specifically included are hospitals and institutions primarily engaged in the care of the sick, the aged, mentally ill or disabled who reside on the premises.

TO WHOM MUST NOTICE BE GIVEN?

All employees (part-time and full-time), regardless of plan enrollment status, must be provided notice. However, no separate notice is required for dependents or other individuals who may become eligible but who are not employees.

NOTICE REQUIREMENTS

Each employee should receive written notice:

- Informing the individual of the existence of the Marketplace, a description of Marketplace services and a manner in which the employee can contact the Marketplace to request assistance;
- That if the employer-sponsored plan does not meet "minimum value" or if the cost of the employer plan (covering the employee and not any other dependents) is more than 9.5% of the employee's household income, the employee may be eligible for premium tax credit by purchasing a qualified health plan through the Marketplace; and
- That the employee, by purchasing a qualified health plan through the Marketplace, may lose the employer contribution (if any) to any employer-sponsored health benefits plan, some or all of which contribution may be tax-free.

The Department of Labor has provided a model notice for both employers who do not offer a health plan and employers who offer a health plan to some or all employees. Employers may find these model notices helpful in providing information about the Marketplace, including references to online sources and contact information. An employer may elect to modify or make additions to the notice, as long as it satisfies the content requirements.

TIMING AND DELIVERY

Notice must be provided to all current employees no later than October 1, 2013. For employees hired beginning October 1, notice must be provided at the time of hire. For 2014, "at the time of hire" is extended to any time within 14 days of the employee's start date.

Employers may provide notice through first-class mail or electronically. Thus, those employers who wish to provide email notices are able to do so but should be sure to comply with the requirements of the Department of Labor's electronic disclosure safe harbor rule.

EMPLOYERS SHOULD CONSIDER MODIFYING COBRA ELECTION NOTICES

Qualified beneficiaries of continuation coverage may want to compare COBRA with other coverage options in the Marketplace. Therefore, an employer is encouraged, *though not required*, to modify COBRA election notices to include information on the Marketplace coverage options. The Department of Labor has made available a model election notice that includes Marketplace coverage options, which can be completed by filling in the blanks with the appropriate plan information.

On July 2, the Obama administration announced plans to delay enforcement of the ACA mandatory employer and insurer reporting

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requirements. That delay does not affect employees' access to the premium tax credits available under the ACA. The published notices and guidance are not to be affected.

If you have questions about the new Marketplace notice or the revised COBRA notice, contact Bill Roberts at (502) 568-1890 or ebplans@hallrender.com or your regular Hall Render attorney.

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