



HEALTH CARE REFORM: Legislative Brief

Exchange Notice Requirements Delayed

The Affordable Care Act (ACA) requires employers to provide all new hires and current employees with a written notice about ACA's health insurance exchanges (Exchanges), effective March 1, 2013.

On Jan. 24, 2013, the Department of Labor (DOL) [announced](#) that **employers will not be held to the March 1, 2013, deadline**. They will not have to comply until final regulations are issued and a final effective date is specified.

This Clarke & Company Benefits, LLC Legislative Brief details the expected timeline for the exchange notice requirements.

EXCHANGE NOTICE REQUIREMENTS

In general, the notice must:

- Inform employees about the existence of the Exchange and give a description of the services provided by the Exchange;
- Explain how employees may be eligible for a premium tax credit or a cost-sharing reduction if the employer's plan does not meet certain requirements;
- Inform employees that if they purchase coverage through the Exchange, they may lose any employer contribution toward the cost of employer-provided coverage, and that all or a portion of this employer contribution may be excludable for federal income tax purposes; and
- Include contact information for the Exchange and an explanation of appeal rights.

This requirement is found in Section 18B of the Fair Labor Standards Act (FLSA), which was created by the ACA. The DOL has not yet issued a model notice or regulations about the employer notice requirement.

WHEN DO EMPLOYERS HAVE TO COMPLY WITH THE EXCHANGE NOTICE REQUIREMENTS?

Section 18B provides that employer compliance with the notice requirements must be carried out "[i]n accordance with regulations promulgated by the Secretary [of Labor]." Accordingly, the DOL has announced that, until regulations are issued and become applicable, employers are not required to comply with the exchange notice requirements.

The DOL has concluded that the notice requirement will not take effect on March 1, 2013, for several reasons. First, this notice should be coordinated with HHS's educational efforts and IRS guidance on minimum value. Second, the DOL is committed to a smooth implementation process, including:

- Providing employers with sufficient time to comply; and
- Selecting an applicability date that ensures that employees receive the information at a meaningful time.

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The DOL expects that the timing for distribution of notices will be the late summer or fall of 2013, which will coordinate with the open enrollment period for Exchanges.

The DOL is considering providing model, generic language that could be used to satisfy the notice requirement. As a compliance alternative, the DOL is also considering allowing employers to satisfy the notice requirement by providing employees with information using the employer coverage template as discussed in the preamble to the Proposed Rule on Medicaid, Children's Health Insurance Programs and Exchanges.

Future guidance on complying with the notice requirement under FLSA section 18B is expected to provide flexibility and adequate time to comply.

Source: U.S. Department of Labor