

Client Alert

ObamaCare Employer Notices Due by October 1, 2013

September 20, 2013 – The Patient Protection and Affordable Care Act (known colloquially as “ObamaCare”) provides to employees who are not covered by health insurance from their employers the option to purchase health insurance through a new Health Insurance Marketplace (the “Marketplace”). ObamaCare also requires all employers to provide written notice of this new marketplace to all employees, regardless of whether they work on a full-time or part-time basis or whether they are currently participating in any employer-sponsored health plan. The U.S. Department of Labor (the “DOL”) has announced that this notice must be distributed by October 1, 2013 to current employees, and within 14 days of an employee’s start date for all employees hired after October 1, 2013.

Most Employers Are Obligated to Provide Notice

The ObamaCare notice requirement applies to all employers subject to the Fair Labor Standards Act (the “FLSA”). The FLSA applies to employers that employ one or more employees who are engaged in, or produce goods for, interstate commerce. The FLSA also covers employers that have at least \$500,000 in annual revenue in any given year. Most employers are covered by the FLSA. However, if you are in doubt as to whether your business is covered, please contact your accountant or any of the undersigned employment attorneys.

Notice Requirements and Distribution

The ObamaCare notice must contain certain specific information. First, the notice must describe the services provided by the Marketplace and provide contact information to obtain Marketplace assistance. Second, the notice must advise employees that they may be eligible for a tax credit if they elect to purchase a plan through the Marketplace. Lastly, the notice must advise employees that if they elect to purchase insurance through the Marketplace, they may lose their health benefits under their employer-sponsored health plan.

In an effort to streamline the compliance process, employers can use, or model their notices on samples, published by the DOL. Links to the specified sample notices are set forth below:

- Model notice for employers who do not offer a health plan. [click here](#)
- Model notice for employers who offer a health plan to some or all employees. [click here](#)
(Note that the individualized information requested on page 3 of this model notice is optional.)

The appropriate notice must be given to all employees in writing by October 1, 2013. It may be delivered by first-class mail or sent electronically to those employees who customarily use a computer with email capabilities as part of their job.

Fine or Penalty for Non-Compliance

A recent publication by the DOL stated that employers covered by the FLSA should provide the required written notice by October 1, 2013 but, at least initially, there will be no fines or penalties issued by the DOL for failing to provide notice. This does not mean, however, that employers should ignore their obligations to send the notices in a timely fashion, as there may be other adverse consequences for noncompliance now and in the future. We therefore suggest that you confer with your insurance provider or legal advisor, as appropriate, and ensure that all employees — and not just health plan participants — receive the required notice under ObamaCare.

If you have any questions regarding these notice requirements, wish to discuss the manner in which such notices may be personalized, or have any other employment issue, please contact:

Jeffrey P. Englander
(212) 735-8720
jenglander@morriioncohen.com

Keith A. Markel
(212) 735-8736
kmarkel@morrisoncohen.com

Evan S. Lupion
(212) 735-8853
elupion@morrisoncohen.com