



HK SCHOOL LAW CLIENT NEWSLETTER

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SERVING INLAND EMPIRE CHARTER SCHOOLS

IN THIS ISSUE

Notice Requirements of the Patient Protection and Affordable Care Act (PPACA)

Beginning October 1, 2013, any business with at least one employee and \$500,000 in annual revenue must notify all employees by letter about the Affordable Care Act's health-care exchanges, or face up to a \$100-per-day fine. The requirement applies to any business regulated under the Fair Labor Standards Act, regardless of size. According to the Department of Labor, letters are to be distributed to any new hires within 14 days of their starting date.

OVERVIEW

Many will recall earlier this summer, the effective date of the employer mandate, which states that every business with at least 50 or more full-time employees must offer workers acceptable coverage or face a \$2,000 penalty per-worker, per-year, was pushed back until 2015. However, the delay of implementation of PPACA penalties only

applies to sections 6055 (requiring reporting by insurers and self-insuring employers and other parties that provide health care coverage and 6056 (requiring reporting of certain employers concerning the health coverage they offer to their full-time employees). All other provisions remain unaffected by the delay, including the employee notification deadline. The employee notification requirement states that those employers subject to the Fair Labor Standards Act (FLSA) must provide written notices about Gov't run exchanges to each of their employees and all new hires by October 1, 2013.

CURRENT LAW

Section 18B of the FLSA, as added by section 1512 of the Affordable Care Act, generally provides that, in accordance with regulations promulgated by the Secretary of Labor, an applicable employer must provide each employee at the time of hiring (or with respect to current employees), a written notice:

- 1) Informing the employee of the existence of the Marketplace (referred to in the statute as the Exchange) including a description of the services provided by the Marketplace, and the manner in which the employee may contact the Marketplace to request assistance;
- 2) If the employer plan's share of the total allowed costs of benefits provided under the



plan is less than 60 percent of such costs, that the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code (the Code) if the employee purchases a qualified health plan through the Marketplace; and

- 3) If the employee purchases a qualified health plan through the Marketplace, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.

The FLSA "covers" or applies to all employees of certain "enterprises." All employees of an "enterprise" are covered regardless of the duties they perform. All Charter schools meet the definition of "enterprise" as defined by the Dept. of Labor:

A pre-school; elementary or secondary school or institution of higher learning (e.g., college);

or a school for mentally or physically handicapped or gifted children (it does not matter if the school or institution is public or private or operated for profit or not for profit).

The PPACA has a general \$100-a-day penalty for non-compliance. The employee notification regulation does not identify a specific penalty for failing to comply with the notice requirement, and as such the \$100 per-day fine may be overlooked by many small businesses. This penalty provision is in the general provisions of the FLSA, and as such the general consensus is that this penalty likely will apply.

WHAT YOU NEED TO DO

While all of our clients have no doubt already been contacted by their health insurance providers about the requirements of this new law, we urge you to contact your provider if you have been so contacted. Your insurance provider should be able to provide you with a model notice and ensure that your organization remains compliant with the requirements of the law.

The PPACA places three requirements on employers to disclose information to employees:

- 1) Employers must provide written notice informing employees about the state's Exchange, including a description of how the employee may contact the Exchange for assistance.
- 2) The employer must notify employees if the plan offered by the employer is inadequate, meaning it does not meet the actuarial value of 60 percent. The employer must let employees know that they may be eligible for a premium tax credit and a cost-sharing reduction if they purchase a health plan through the Exchange.
- 3) Employers must notify employees that if they purchase a health plan through the Exchange, the employee may lose the employer's contribution to health benefits offered by the employer.

Employers must provide a notice of coverage options to each employee, regardless of plan enrollment status (if applicable) or of part-



time or full-time status. Employers are not required to provide a separate notice to dependents or other individuals who are or may become eligible for coverage under the plan but who are not employees.

Pursuant to the statute, the notice to inform employees of coverage options must include information regarding the existence of a new Marketplace as well as contact information and a description of the services provided by a Marketplace. The notice must also inform the employee that the employee may be eligible for a premium tax credit under section 36B of the Code if the employee purchases a qualified health plan through the Marketplace; and a statement informing the employee that if the employee purchases a qualified health plan through the Marketplace, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.

Employers are required to provide the notice to each new employee at the time of hiring beginning October 1, 2013. For 2014, the Department will consider a notice to be provided at the time of hiring if the notice is provided within 14 days of an employee's start date.

With respect to employees who are current employees before October 1, 2013, employers are required to provide the notice not later than October 1, 2013. The notice is required to be provided automatically, free of charge.

The notice must be provided in writing in a manner calculated to be understood by the average employee. It may be provided by first-class mail. Alternatively, it may be provided electronically if the requirements of the Department of Labor's electronic disclosure safe harbor at 29 CFR 2520.104b-1(c) are met.

To satisfy the content requirements for FLSA section 18B, model language is available on the Department's website www.dol.gov/ebsa/healthreform. There is one model for employers who do not offer a health plan and another model for employers who offer a health plan or some or all employees. Employers may use one of these models, as applicable, or a modified version, provided the notice meets the content requirements described above.

QUESTIONS?

As always, if you have questions about the implementation of this law, please call us at any time for guidance.