



KD Alert: Employers to Comply With Affordable Care Act Notice Obligation by October 1st

*by Keith J. Gutstein and Jennifer E. Sherven
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As required by the Patient Protection and Affordable Care Act (the “Affordable Care Act”), most employers are expected to provide a written notice to all employees about their health insurance options, also known as the Health Insurance Marketplace. Contrary to the general misconception that all employer obligations under the Affordable Care Act have been delayed until 2015, this notice obligation was not extended, and thus, employers should comply by October 1, 2013. The written notice requirement applies to all employers who are covered by the Fair Labor Standards Act (the “FLSA”), which covers the majority of private-sector employers and certain governmental entities.

Specifically, Section 1512 of the Affordable Care Act amended the FLSA to require all employers to provide their current employees with this written notice by October 1, 2013, and within fourteen (14) days of a new employee’s start date. The notice should be given to every employee (full-time, part-time, temporary or seasonal) regardless of whether the employer offers a health plan to the employee. It is not sufficient to post a sign or to provide a stack of notices for employees to take. The Affordable Care Act requires that the notice include certain detailed information, such as facts about the Health Insurance Marketplace and eligibility for premium tax credits. In addition, the notice should contain employer specific information, including the employer’s name, tax identification number, address, telephone number, and the name of the person(s) the employee may contact. The notice should also indicate whether the employer offers a health plan, and if so, which employees are eligible. Finally, if an employer offers a health plan, the employer should indicate whether the health plan is affordable.

Although the U.S. Department of Labor (“DOL”) advised on September 11, 2013 that employers will not be penalized for failing to comply, employers are encouraged by the DOL to issue the notices by the aforementioned deadlines. The DOL has prepared model notices that employers may utilize.

If you would like copies of the model notices or have questions about the proper notice required under the Affordable Care Act, please contact one of the attorneys in Kaufman Dolowich & Voluck’s Labor and Employment Group. Our firm provides employers with guidance in formulating and implementing employment practices and decisions to stay ahead of new and complex statutory regulations, and minimize their potential liability exposure.