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Employee Benefits | Life Insurance | Risk Management

TO: Clients of Sitzmann Morris & Lavis Insurance Agency

RE: Exchange Model Notices

The Department of Labor (DOL) issued Technical Release 2013-02 on May 8th. Included in this release is guidance on the notice requirement related to the state Exchanges as well as an update on the COBRA model election notice.

Background: The Patient Protection and Affordable Care Act (PPACA) amended the Fair Labor Standards Act (FLSA) requiring a notice to employees of coverage options available through the "Marketplace", more commonly referred to as the state Exchanges. Open enrollment for health insurance coverage through the state Exchanges begins October 1, 2013. PPACA contained a March 1, 2013 deadline for providing a notice to all employees. The DOL delayed the deadline in guidance issued on January 24, 2013, indicating the timing was delayed until late summer or fall of 2013.

The amendment to the FLSA requires that the employer must provide each employee a written notice:

- 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;
- 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
- 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 Technical Release provides temporary guidance and a model notice in advance of the summer/fall deadline in response to the requests from employers for a model notice on an earlier timeframe so that they may be able to inform their employees now about the upcoming options through the Exchange. Employers are permitted to use the model notice and/or rely on this temporary guidance prior to the October 1, 2013 deadline.

Key Provisions: The Exchange model notices provided by the DOL can be found at http://www.dol.gov/ebsa/healthreform.

The notice requirement applies to all employers to which the FLSA applies. If you are not certain whether you are subject to the FLSA, please refer to the Department of Wage and Hour Division's online compliance tool to determine applicability of FLSA. See http://www.dol.gov/elaws/esa/flsa/scope/screen24.asp.

Effective dates: Employees who are current employees before October 1, 2013, must receive the notice not later than October 1, 2013. Employers are required to provide the notice to each new employee at the time of hiring beginning October 1, 2013. This includes all employees regardless of benefit eligibility, part-time or full-time status.

Method of Delivery: The notice must be provided in writing in a manner calculated to be understood by the average employee. The model notices satisfy this requirement. The notice may be provided by first-class mail. It may be provided electronically only if the requirements of the DOL's electronic disclosure safe harbor are met. (See 29 CFR 2520.104b-1(c).) In general, only employees who use a computer as an essential function of their job can receive the notice electronically.

Updated COBRA election form

The DOL updated the model election notice to help make qualified beneficiaries aware of other coverage options available in the state Exchanges. The model election notice is available in modifiable, electronic form on the Department's website at: http://www.dol.gov/ebsa/cobra.html. A clean copy is available, as is a redline version from the prior model notice to help interested stakeholders identify the changes.

What's Next:

Employers can use the model Exchange notice provided, or a modified version, provided the notice meets the content requirements described in the Background section above.

Employers who do not use a COBRA administrator should update their existing COBRA notices. With the availability of coverage through the Exchanges it is possible that the need for COBRA coverage will drop as participants choose less expensive individual coverage through the Exchange. Qualified beneficiaries may also be eligible for a premium tax credit to help pay for the cost of coverage through the Exchange.

The information provided in this legislative update for our clients and colleagues is for general guidance only and is not intended to be, and does not constitute, tax or legal advice. We recommend that you consult with your tax and legal advisors for the interpretation or application of any laws for your particular circumstances and situation.