



SMALL BUSINESS
LEGISLATIVE
COUNCIL

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EXCHANGE REQUIRED NOTICE

Section 18B of the Fair Labor Standards Act (FLSA), as added by section 1512 of the Patient Protection and Affordable Care Act, provides that an employer must provide each employee at the time of hiring (*or with respect to current employees, not later than October 1, 2013*), a written notice:

This latter requirement for current employees is why we are reminding you today.

TWO IMPORTANT THINGS: THIS COVERS

**1) NEARLY EVERY EMPLOYER
REGARDLESS OF SIZE AND**

**2) REGARDLESS OF
WHETHER YOU PROVIDE
HEALTH INSURANCE TO
YOUR EMPLOYEE OR NOT
AND REGARDLESS IF YOU
WILL BE REQUIRED TO OR
NOT.**

The notice must include:

*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.

There are model notices provided by the federal government that you can use although you can do your own.

For those that do offer a plan:
<http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>

For those that do not offer a plan:
<http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf>

For some additional technical information you can go to <http://www.dol.gov/ebsa/newsroom/tr13-02.html>

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 to those who typically have email access as part of their work situation.

When we say “almost every employer” it is because this notice is based on the FLSA definition of employee. In general, the FLSA applies to employers that employ one or more employees who are engaged in, or produce goods for, interstate commerce. For most firms, a test of not less than \$500,000 in annual dollar volume of business applies.

There is no specific penalty for noncompliance. There may be FLSA or PPACA general reporting compliance penalties that might apply. It is not entirely clear which ones might apply.