

**ObamaCare on the Horizon:
A Brief Overview of the Exchanges & Employers' Notice Requirements**

In less than two weeks, on October 1, 2013, the health insurance Marketplace (or “Exchange”, as it is commonly referred to) is scheduled to open. This Exchange is the cornerstone of President Obama’s Patient Protection and Affordable Care Act (“ACA” or the “Act”), through which the ACA’s goal of providing affordable healthcare to all Americans is to be facilitated.

The Exchange will open for initial enrollment on October 1, 2013 and run through March 31, 2014. The Act provides for two different types of Exchanges – a Health Insurance Exchange for Individuals and a Small Business Health Options Program, or “SHOP,” for small business owners¹. The Exchanges are supposed to operate similarly to popular service websites, such as Expedia.com, wherein service providers compete for business based on the consumers’ selected criteria.

However, the Exchanges have already proven to be logistically difficult to implement. For example, the Department of Health and Human Services (“HHS”) has indicated a computer glitch may affect how the premiums of some tobacco smokers may be calculated. The details of how the Exchanges will operate will hopefully become clear once they open.

More importantly for Employers, the Act imposes an obligation to provide notice of the Exchanges on or before October 1st. All Employers covered by the Fair Labor Standards Act must provide written notice about the Exchanges to all current part-time and full-time

¹ A small business is defined as a business with 100 or fewer employees. However, the Act permits states to limit participation in the SHOP to businesses with 50 or fewer until 2016.

employees, including union employees, regardless of whether the employee currently has coverage.²

According to the Act, the notice is only required to:

- (1) include certain basic information about the new health insurance Exchange, including information regarding the way in which an employee may contact the Exchange for assistance;
- (2) inform employees that, depending on their income and the coverage offered by their Employer, they may be entitled to a premium tax credit and/or cost sharing reduction, if the employee purchases insurance through the Exchange; and
- (3) inform employees that if they purchase health insurance through the Exchange they will lose any Employer contribution to their health insurance premiums, and that all or a portion of such Employer contribution may be excluded from income for Federal income tax purposes.

To help Employers ensure that their notice meets the Act's requirements, the Department of Labor ("DOL") has prepared two model notices that Employers may use -- one notice covers those Employers who offer health insurance coverage to their employees, and the other notice covers Employers who do not. The model notices also include additional information the Employer may provide to its employees in order to help them navigate the Exchanges.

The DOL has indicated that Employers may deliver the notice via first-class U.S. Mail, or through electronic distribution. However, an Employer may only distribute the notice electronically if the requirements of the DOL's electronic disclosure safe harbor are met.

² Note -- Employers are not required to provide notice to dependents of covered employees, or COBRA qualified beneficiaries.

In addition, beginning October 1, 2013, Employers will be required to provide written notice of the Exchanges to all new employees upon their hiring. For 2014, the DOL will consider a notice to be provided at “the time of hiring” if the notice is provided within fourteen days of the employee’s start date. To ensure compliance with the “new employee” aspect of the notice requirement, Employers would be well-advised to include this notice in their personnel handbooks and/or new employee orientation packets.

The DOL has also indicated that there is no fine or penalty associated with an Employer’s failure to provide notice of the Exchanges to its employees. However, the Act does contain a \$100 per day per worker penalty for general non-compliance with the ACA. Therefore, to ensure your Company is ACA compliant and to foreclose any possibility of your Company being subject to any fines or penalties, the required notice should be provided to all current employees on or before October 1st and to all new employees upon their hiring.

For more information about the Affordable Care Act’s impact on your Company and how **Hesse Martone, P.C.** can help keep your Company ACA compliant, contact Adam Doerr (adamdoerr@hessemartone.com), Abby Schwab (abbyschwab@hessemartone.com) or Andy Martone (andymartone@hessemartone.com).

Next Week: A look at the Employer “Pay or Play” Penalties.