



## Health Care Reform **Bulletin**

# FAQ on Exchange Notice Penalties

Provided by ELT Insurance Services

### Quick Facts

- On Sept. 11, 2013, the DOL issued an FAQ on the Exchange Notice penalties.
- According to the DOL, employers cannot be fined for failing to provide the notice.
- Employers may still want to provide the Exchange Notices for several reasons.
- The deadline for providing the Exchange Notice is Oct. 1, 2013.

**Most employers must provide an Exchange notice to employees by Oct. 1, 2013, but they will not be fined for failing to provide the notice.**

The Affordable Care Act (ACA) requires employers to provide all new hires and current employees with a written notice about the ACA's health insurance exchanges (Exchanges), effective Oct. 1, 2013.

On Sept. 11, 2013, the Department of Labor (DOL) issued a [frequently asked question](#) (FAQ) on the penalties for failing to provide an Exchange Notice. In this FAQ, the DOL stated that **there is no fine or penalty under the ACA for failing to provide the notice.**

### Exchange Notice Requirements

The ACA requires all employers that are subject to the Fair Labor Standards Act (FLSA) to provide a written notice to their new and current employees about the Exchanges.

The notice should inform employees:

- About the Exchange;
- That they may be able to get lower-cost private insurance in the Exchange; and
- That they may lose the employer contribution (if any) to their health benefits if they buy insurance through the Exchange.

The DOL has issued two model notices to help employers comply. There is one model for employers that do not offer a health plan and another model for employers that offer a health plan for some or all employees:

- [Model Notice for employers that offer a health plan to some or all employees](#)
- [Model Notice for employers that do not offer a health plan](#)

Employers may use one of these models, as applicable, or a modified version. More compliance assistance information is available in a [Technical Release](#) issued by the DOL.

The deadline for providing the Exchange Notice is Oct. 1, 2013.

### Penalties for Failing to Comply

Although employers that are subject to the FLSA should provide a written notice to their employees about the Exchange by Oct. 1, 2013, the DOL asserted in the FAQ that there is no fine or penalty under the ACA for failing to provide the notice.

This means that **employers cannot be fined for failing to provide employees with notice about the ACA's new Exchanges.**



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### **What This Means for Employers**

Although this FAQ asserts that there will be no penalties for failing to provide an Exchange Notice, there are several reasons employers may still want to provide the notice.

The Exchange Notice can help employers answer employee questions about:

- What the Exchange is;
- Whether the employer will still provide a plan once the Exchanges are operational;
- How Exchange plans are different from the employer's plan; and
- Whether the employer's plan is intended to be affordable and provide minimum value.

If the employer's plan is affordable and provides minimum value, employees will not be eligible for federal subsidies through the Exchange. However, most employees will have the option of waiving employer-sponsored coverage and, instead, enrolling in coverage through the Exchange.

In many cases, employer-sponsored coverage may be a better option for employees than Exchange coverage. For example, premiums for employer-sponsored coverage will often be cheaper for the employee than premiums for coverage through the Exchange. Additionally, the employee portion of the premium for employer-sponsored coverage is typically excluded from taxable income and is therefore tax-free. This is not the case in the Exchange.

### **More Information**

Please visit the [DOL website](#) or contact ELT Insurance Services for more information on the Exchange Notice requirement.

