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# ACA: Required Marketplace/Exchange Notice

The Affordable Care Act (ACA) added § 18B to the Fair Labor Standards Act (FLSA), requiring employers to provide all new hires with a notice regarding health insurance options that may be available to them through the Marketplace (also called the Exchange).

## Quick Facts

Employers should note the following requirements for health insurance notification:

- Employers are required to give their workers a *Notice of Marketplace Coverage Options* (Exchange Notice) within *14 days* of hire.
- Employers must distribute the notice to *all* employees—full-time, part-time, seasonal, temporary, etc.—whether they are eligible for benefits at work or not. This notice requirement applies regardless of whether the employer itself offers any coverage to workers.
- The notice is not required for dependents, retirees, former employees, or COBRA.
- Model notices are posted on the Department of Labor (DOL) website. Start with the model notice and then fill in the blanks and variable items as needed for each employer. See the [Step-by-Step Tips for Completing the Notice](#) section for links to the model notices and tips for completing the appropriate notice for your employees. **Note:** The DOL model notices show an expiration date in the upper right corner, but employers can continue using them until the DOL posts new editions.
- Employers must distribute the notice by First Class Mail to employees' homes. Alternatively, employers may use electronic delivery (such as email) only if the delivery method complies with the DOL safe harbor rule.
- **Exception:** A small number of employers are exempt from the requirement to provide the notice. See the [Details](#) section for more information.

## Details

### What is the Notice of Coverage Options (Exchange Notice)?

The ACA—often called federal healthcare reform—requires employers to notify workers about the availability of the new Health Insurance Marketplaces. The Marketplace is an insurance exchange where individuals can compare individual health insurance plans offered by private insurance companies.

### What does the notice say?

The notice contains information that may be helpful to employees considering individual health insurance policy options available from the Marketplace. The notice is intended to:

- Inform employees about the availability of the Health Insurance Marketplace;
- Inform employees that they may be eligible for financial assistance (premium tax credit or cost-sharing reductions) if they purchase coverage through the Marketplace and if the employer's plan would not provide minimum value; and
- Inform employees that if they buy insurance through the Marketplace, they may lose their employer's contribution (if any) to their health benefits.

Employers do not need to design a notice. The DOL provides model notices, so each employer can use one of the model notices and fill in information where indicated. See the [Step-by-Step Tips for Completing the Notice](#) section for instructions.

### **Is the notice a one-time requirement?**

No. The notice is an ongoing requirement and should be part of your standard new hire process. Employers must provide the notice to all new hires within *14 days* of hire.

### **Are all employers required to distribute the notice?**

Yes, with very few exceptions. The following employers are required to provide the notice:

- A hospital or an institution primarily engaged in caring for the sick, aged, mentally ill, or disabled on the premises;
- A school for children who are mentally or physically disabled or gifted; a preschool, elementary or secondary school; or an institution for higher education;
- A federal, state, or local governmental agency; or
- Any other employer covered by the FLSA. The FLSA covers most private employers, although some small businesses may be exempt. Employers can use the [DOL tool](#) to see if they are exempt from the FLSA.

### **Which employees must receive the notice?**

All employees must receive the notice, including full-time, part-time, temporary, seasonal, and union employees. The distribution should include all W-2 employees regardless of whether they are eligible or ineligible for benefits.

Distribution to non-employees (dependents, retirees, former employees, COBRA) is not required.

### **What are the delivery options?**

The notice must be distributed free of charge to employees. Delivery can be made by:

- First-Class Mail to the employee’s home; or
- Electronic delivery per the DOL electronic disclosure safe harbor. This generally means that all the following conditions are met:
  - The delivery method must be designed to ensure actual receipt (such as via email directly to the employee instead of merely posting the material on the company intranet);
  - The employee regularly accesses electronic media as an integral part of their regular job duties; and
  - The employer notifies the employee of the significance of the material and that a paper copy is available at no cost upon request.

See the DOL rule relating to the use of electronic delivery [here](#).

### **Must the notice be provided in languages other than English?**

There is no specific requirement to provide non-English notices. However, the DOL guidance refers to providing the notice “in writing in a manner calculated to be understood by the average employee.” The DOL has made the model notices available in Spanish. For copies, see the links under the [Official Guidance](#) section.

### **Does the DOL provide technical instructions regarding the notice?**

[Technical Release 2013-02](#) provides guidance for the notice requirement and delivery options.

### **What is the penalty for employers that fail to distribute the notice?**

There is no fine or penalty under the law for failing to provide the notice. It is assumed that employers will distribute the notice in good faith to provide helpful information to their workers.

## **Step-by-Step Tips for Completing the Notice**

The DOL provides model notices for employer use. Before distributing, the employer must complete the blank and variable items in the notice. Note that the model notices show an expiration date in the upper right corner, but employers can continue using them until the DOL posts new editions.

### **A. For employers that do not offer a health plan:**

Download the DOL [model notice](#) for employers that *do not* offer a health plan.

1. Complete boxes 3 through 12 with information about the employer. **Note:** There are no boxes 1 or 2. This is deliberate. The boxes are numbered for consistency with other material used at the Marketplace (insurance exchange).
2. The notice is complete and ready for copying and distribution to employees.

**B. For employers that offer a health plan to some or all employees:**

Download the DOL [model notice](#) for employers that *do* offer a health plan to some or all employees.

1. Insert appropriate contact information (e.g., HR representative and phone number) in Part A, “How Can I Get More Information?” on page 2.
2. Complete Part B, boxes 3 through 12, with information about the employer on page 3. **Note:** There are no boxes 1 or 2. This is deliberate. The boxes are numbered for consistency with other materials available at the Marketplace (insurance exchange).
3. Add basic information about the employer health plan’s eligibility criteria for employees and dependents where indicated in Part B.
4. The check-off box on page 4 (Part B) asks whether the employer’s coverage meets the ACA standards for “minimum value” and “affordable” coverage. Before completing this item:
  - Obtain confirmation from the insurance company (or plan actuary) regarding whether the plan benefits provide minimum value per ACA regulations.
  - Determine whether the employee contribution (payroll deduction) for self-only coverage under the lowest-cost minimum value plan is “affordable” per ACA regulations. Generally, **affordable** means that the required contribution for self-only coverage does not exceed 9.02% of wages for the 2025 plan year (9.96% for the 2026 plan year).
  - **Important:** If you cannot confirm *both* “minimum value” *and* “affordable,” do not check the box. In that case, you may want to add a brief explanation. Here are some examples:
    - Example I: “At this time, information is not yet available regarding whether the health coverage offered by the employer will meet the ACA definitions of ‘minimum value’ and/or ‘affordable’ for [insert year].”
    - Example II: “The coverage meets the minimum value standard. The coverage also is intended to be affordable but may not meet the standard for affordability depending on each eligible employee’s wages. If you need information specific to your situation, contact [insert HR contact info] to request a personalized copy of this notice.”
5. Part B, items 13 through 16, are *optional* and may be left blank (but do not delete them). These items require personalization for each employee. Because the section is optional, it may be left blank or be completed for all recipients. For the initial non-personalized copy, consider adding a brief explanation immediately before box 13, such as, “The following optional items are intentionally left blank. We (your employer) will complete these items on a personalized basis for you upon your request. To request a personalized copy, contact the employer at the number listed under ‘How Can I Get More Information’ on page 2.”
6. Once complete, the notice is ready to copy and distribute to all employees.

***If coverage is affordable for some but not all eligible employees, should the employer prepare separate versions of the notice?***

There is no requirement to prepare and distribute separate notices for different employee classes. Most employers will find that using one consistent notice for all employees will help avoid the challenges of tracking who received which version.

Lastly, note that employees who want to consider individual policy options at the Marketplace, particularly those applying for financial assistance, may need the information in boxes 13-16 in the notice. Employers should be prepared to respond promptly to an employee's request for a personalized notice, including those items.

## Official Guidance

The federal departments provide regulatory guidance on this topic in the following materials:

[Technical Release 2013-02, Guidance on the Notice to Employees of Coverage Options](#) (May 8, 2013).

[FAQ on Notice of Coverage Options](#) regarding lack of penalty for failure to provide notice.