



## Quick Facts:

- Employers are required to give their workers a **Notice of Marketplace Coverage Options** (“Exchange Notice”) within **14 days of hire**.
- Distribute the notice to **all** employees — full-time, part-time, seasonal, temporary, etc. — whether or not eligible for benefits at work.
- 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 “Step by Step Tips for Completing the Notice” below for links to the model notices and tips for completing the appropriate notice for your employees.
- Distribute the notice by first-class mail to the employees’ homes. Alternatively, you may use electronic delivery (such as email) but 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 “Details,” next.

## Details:

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

The Affordable Care Act (ACA) — often called federal health care 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 at work.

Employers do not need to design a notice. The U.S. Department of Labor (DOL) provides model notices so each employer can use one of the model notices and fill in information where indicated. See Step-by-Step Tips below regarding completing the notice.

### 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. (The notice was first required for all existing employees by October 1, 2013.)

### 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 that is covered by the Fair Labor Standards Act (FLSA). The FLSA covers most private employers, although some small businesses may be exempt. Employers can use the DOL tool at <http://www.dol.gov/elaws/esa/flsa/scope/screen24.asp> 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 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 **if** in accordance with 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 the electronic media as an integral part of his or her 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.

For a copy of the DOL rule relating to the use of electronic delivery, [click here](#).

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

There is no specific requirement to provide non-English notices, although 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 "Official Guidance" below.

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

Technical Release 2013-02 provides guidance regarding the notice requirement and delivery options. For a copy, [click here](#).

### **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

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

Download the DOL model notice here: [Model notice for employers who 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 that is used at the Marketplace (insurance exchange).
2. The notice is complete and ready for copying and distributing to employees.

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

Download the DOL model notice here: [Model notice for employers who 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?”
2. Complete Part B, 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 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 last check-off box on page 2 (Part B) asks whether the employer’s coverage meets the Affordable Care Act (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 9.5 percent of wages.

**Important:** If you are unable to 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 Affordable Care Act definitions of ‘minimum value’ and/or ‘affordable’ for 2015.”

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.”

1. 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, so we suggest leaving them blank unless/until the employee requests the information. 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, please contact the employer at the number listed under “How Can I Get More Information” on page 1.”

2. 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): [click here](#).

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

The Department of Labor provides model notices for employer use (note that blank and variable items must be completed by employer before distribution):

- [Model notice for employers who \*\*do\*\* offer a health plan to some or all employees](#)
- [Model notice for employers who \*\*do not\*\* offer a health plan](#)
- [Spanish — Model notice for employers who \*\*do\*\* offer a health plan to some or all employees](#)
- [Spanish — Model notice for employers who \*\*do not\*\* offer a health plan](#)

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