

Farms and small businesses should provide employees with health care information by Oct. 1

Employers of all sizes should provide their employees with health care information, but will they be penalized for non-compliance?

Posted on September 18, 2013 by Adam Kantrovich, Clemson University Extension

Most farms and small businesses are aware of the Affordable Care Act (ACA) and some of its requirements. By January 1, 2014 all individuals are required to carry health care insurance for themselves and their dependents. In just a few weeks health care insurance exchanges (also known as the Health Insurance Marketplaces) come online to allow individuals and small businesses to shop for health care insurance. The Marketplace opens on Oct. 1, 2013 and according to the U.S. Department of Health and Human Services Michigan residents will use the HealthCare.gov website to purchase insurance from the Marketplace. Residents can still go through a health insurance agent if they wish but the Marketplace will be available to all individuals and small businesses.

While the individual mandate still begins for the 2014 year the employer requirement to provide health insurance to their full-time employees (for those that have 50 or more FTE's) as of late Sept. 2013, the date has been delayed and will not begin until Jan. 1, 2015. For those employers that must provide healthcare benefits under the ACA, employers that choose not to provide the required coverage for their employees can face severe financial penalties.

Employers received a one year reprieve from providing health care insurance to their full-time employees until 2015, but many are unaware that all employers that are subject to the Fair Labor Standards Act (FLSA) should provide their employees with a health care benefits notification by Oct. 1, 2013. Past articles that news media and I have released stated that there could be a fine of up to \$100/per day per employee. There has been a great deal of confusion about the penalty for non-compliance of the employee notification regulation. There is information coming from multiple sources and multiple interpretations of the ACA. Many of the clarifications finally come from Technical Releases by the U.S. agencies/departments involved with the ACA. Unfortunately, many organizations and businesses are preparing to follow the ACA regulations that have caused interpretations of the law and has caused confusion.

According to the U.S. Department of Labor Technical Release 2013-2 posted on May 8, 2013, there is no mention of a penalty but under section II referring to an earlier change it states that "...an applicable employer must provide each employee at the time of hiring (or with respect to current employees not later than March 1, 2013)..." The date of which was pushed back and within the May 8, 2013 technical release set the new date to Oct.1, 2013. Under section III, sub-section D it now states

“Employers are required to provide the notice to....” All of the phrasing indicates a requirement for all employers to provide notification of their health care benefit rights by Oct. 1, 2014 for current employees and within 14 days of hire for new employees following Oct. 1, 2014.

Since this seems to be a requirement of the Affordable Care Act but made no specific stipulation within its specific section of penalties, many attorneys and others felt that one of the other non-compliance penalties would apply being the \$100/per day per employee.

The U.S. Department of Labor clarified the May 8, 2013 Technical Release 2013-2 by a statement on their website through a Frequently Asked Questions page that says “No. If your company is covered by the Fair Labor Standards Act, it should provide a written notice to its employees about the Health Insurance Marketplace by Oct. 1, 2013, but there is no fine or penalty under the law for failing to provide the notice.”

Although this may seem like a positive, there is still a lot of anxiety and confusion on whether or not a penalty can be induced as can be seen by many news reports, attorneys and others. Michigan State University Extension recommends it is safer to err on the side of caution and that employers follow the Oct.1, 2013 regulation. If an employer is not sure whether they fall under the Fair Labor Standards Act, they should contact their professional legal and/or tax advisors. Again, it’s best to err on the side of caution and provide notice to your employees.

The U.S. Dept. of Labor’s Fair Labor Standards Act states that “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”. Healthcare, education, and government agencies may have other or additional requirements. The United States Department of Labor provided a technical release on their website that discusses an employer notification requirements including:

Providing the employee with information about the Marketplace shop (also known as the Exchange), how to contact the Marketplace, the type of services and how to receive assistance.

Whether the employer provides insurance and if so, will it meet the minimum requirements of the ACA or if the employee will be eligible for a premium tax credit?

That an employee who purchases a qualified health plan through the Marketplace, might 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.

The U. S. Department of Labor has provided two sample notification templates that can be used by employers:

one for employers that do not provide health care benefits

one for employers that do provide health care benefits
Spanish versions of the form can also be found on their website or on the MSU Farm Management website.

With the complexity of this act, Michigan State University Extension reminds employers that it is always a good idea for all businesses to consult with their respective legal advisors to make sure they are meeting the necessary requirements of the Affordable Health Care Act.

For further information please contact me at akantrov@msu.edu or view the MSU Extension Farm Information Resource Management webpage.

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