

# FACT SHEET FOR FARM EMPLOYERS

## OCTOBER 1, 2013 DEADLINE AFFORDABLE CARE ACT “EXCHANGE NOTICE” REQUIREMENT

The federal Affordable Care Act (ACA) requires most farm employers to inform employees about their ability to purchase health insurance coverage through state or federally-administered insurance exchanges. By October 1, 2013, most farm employers must provide each employee with an “Exchange Notice”. This Fact Sheet is intended to provide guidance to farm employers on how to comply with this new and ongoing requirement.\*

### *What is an Exchange Notice?*

- An Exchange Notice is a written notice informing your employees of their ability to purchase health insurance coverage through a state or federally-administered exchange. The Exchange Notice also explains some of the benefits and consequences to your employees if they choose to purchase health coverage through an exchange, particularly if they elect not to participate in a health insurance plan you offer as their employer.

### *Who is required to provide the Exchange Notice?*

- Any farm employer subject to the Fair Labor Standards Act (FLSA) must provide an Exchange Notice to employees. You must provide an Exchange Notice even if you do not offer an employer-sponsored health plan to your employees.
- U.S. Department of Labor (USDOL) guidance relating to the applicability of the FLSA can be found at <http://www.dol.gov/elaws/esa/flsa/scope/screen24.asp>. It is recommended that you confirm with counsel or your consultant before determining that you are not subject to the FLSA and therefore are not required to provide your employees with an Exchange Notice.

### *To whom must the Exchange Notice be provided?*

- The Exchange Notice must be provided to all current and new full-time and part-time employees, including:
  1. H2A workers, and
  2. Seasonal employees.

*\*This fact sheet is intended to be purely informational and does not constitute legal advice. For legal advice, please contact an attorney.*

- If your workers are hired through a farm labor contractor, it is recommended that you provide the employees with an Exchange Notice. Ultimately the labor contractor may be deemed the “employer” for purposes of the ACA, but if you provide employees with an Exchange Notice, you ensure that you have satisfied the ACA just in case you are deemed to be the “employer”.
- The Exchange Notice does not need to be provided to former employees (including retirees) or independent contractors.

***When must the Exchange Notice be provided?***

- The Exchange Notice must be provided to all current employees no later than October 1, 2013. For employees hired on or after October 1, 2013, the Exchange Notice must be provided to each new employee within 14 days of hire.

***What information must be provided in the Exchange Notice?***

- USDOL guidance sets forth a minimum amount of information you must provide to your employees. At a minimum, the Exchange Notice must inform your employee of the following:

1. The name and contact information of the health exchange available in your state.

Note: You can learn about the health insurance exchange in your state by visiting the following website: <https://www.healthcare.gov/what-is-the-health-insurance-marketplace/>. The drop-down menu on the bottom of this website allows you to identify your state and locate the entity providing health coverage on the exchange. For states offering an exchange, the website will provide a link to the state exchange. If your state does not have an exchange, the website will direct you to the federally-administered exchange.

2. Describe the services provided by the exchange available in your state. Each exchange website will provide additional information and a description of services provided. Providing your employee with the website for the exchange available in your state is sufficient to meet this requirement.
3. Inform your employees that they may be eligible for premium tax credits or cost sharing reductions if they chose to purchase health coverage on the exchange.

Note: Tell your employees whether or not the health coverage offered as an employee benefit meets the “minimum value” test provided in the ACA. To make this determination, it is suggested that you contact your health plan’s broker. If your plan fails the minimum value test then your employees may be eligible for a premium tax credit if they choose to purchase health coverage on an exchange.

4. Inform your employees that if they elect to purchase health coverage on the exchange (and not your employer-sponsored plan), the employee will forfeit your contribution to their health coverage premium.
5. Inform your employees that if they elect to purchase health coverage on the exchange, not only will they forfeit your contribution to their health coverage premium, they may also lose the related tax benefit associated with your contribution since it may have been excludable from the employee's income for federal income and payroll tax purposes.

***Is there a model Exchange Notice that I can use?***

- Yes. There are three model forms that you may use. Each form is attached to this Fact Sheet.
  1. A one-page basic model form provides the minimum amount of information all employers must communicate to employees.
  2. If you offer health coverage to your employees, you may utilize a second model form located on the USDOL website at <http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>. This form asks for more information than the basic model form that would be helpful to your employees in seeking coverage on the exchange.
  3. If you do not offer health coverage to your employees, USDOL provides another form at <http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf>. This form asks for more information than the basic model that would be helpful to the employee in seeking coverage on the Exchange.

***How must the Exchange Notice be presented or delivered?***

- As an employer, you must provide either a written or electronic Exchange Notice to each employee. It is recommended that you provide written notice, via first-class mail, or deliver the Exchange Notice in-person. It is strongly recommended that you require each employee to sign a document acknowledging receipt.

***Can I charge my employees or benefit plan for the cost of the Exchange Notice?***

- No. You are solely responsible for the costs of providing the Exchange Notice to your employees.