

Employment Law

Employers Beware – Marketplace Notices Under the Affordable Care Act May be Coming to You

By **Lauren Manduke** on August 3, 2016

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As we have previously **explained**, certain employers with 50 or more full-time employees (or equivalents) will incur a penalty from the IRS if they fail to offer health insurance coverage to their full-time employees and their dependents that meet certain standards under the Affordable Care Act (“ACA”). Now that the ACA has been in effect for several years, employers are beginning to receive Federally Facilitated Marketplace Notices (“Marketplace Notices”) from the health insurance marketplaces (where employees may purchase insurance and receive tax credits to subsidize their purchase in the event his or her employer fails to offer insurance). A sample Marketplace Notice can be found **here**.

These Marketplace Notices explain that the employer may be subject to a fee for failing to offer affordable coverage that meets the minimum value standards required under the ACA. Because employers only have a limited amount of time to respond to a Marketplace Notice, it is important that employers are aware that these notices are being issued and how to appeal a notice issued in error. This blog discusses employers’ rights with respect to Marketplace Notices and how an employer may limit its employer-mandate liability exposure under the ACA.

The ACA requires the marketplaces to send notices to employers if an employee received an advance payment of a tax credit after purchasing insurance from a marketplace. The

employer then has 90 days *of the date of the Marketplace Notice* (not date of receipt) to appeal if the employer believes the notice has been sent in error. While the marketplaces cannot fine employers, a successful appeal is helpful in defending against a penalty assessed by the IRS against the employer for failing to provide affordable coverage to its employees.

In deciding whether to appeal these types of notices, the employer should confirm whether it offered the employee in question **affordable coverage that provides minimum value** under the employer's health plan. The employer should also verify that the employee is in fact employed by the organization and a full-time (or equivalent) employee. Because an employer must be able to establish that it offered coverage to its employee to prevail on appeal, it is important that employers maintain files with respect to the employer's requirements under the ACA.

Assuming the employer confirmed it offered the appropriate insurance to its employee(s), an employer may challenge a Marketplace Notice in one of two ways: (1) complete the Employer Appeal Request Form found **here**; or (2) submit a letter with the business name, the employer ID number, the employer's primary contact name, phone number, and address, as well as the reason for the appeal. The employer should also include the date of the marketplace notice, when received, and the employee's information. The Appeal Request form or letter and a copy of the marketplace notice should be sent to the Department of Health and Human Services, Health Insurance Marketplace, 465 Industrial Blvd., London, KY 40750-0061. After the appeal is filed, the employer will receive a letter confirming receipt of the appeal and instructions for submitting additional information if necessary. Questions about a specific appeal should be directed to the Marketplace Appeals Center at 1-855-231-1751 Monday through Friday between 9:00 a.m. and 7:00 p.m. Eastern Time.

Finally, employers should be aware that the Marketplace Notices are sent to the address provided by the employee. If an organization has multiple locations, the notice will be sent to the address provide by the employee which may not be the preferred address for the employer. Because of the short amount of time to appeal, employers should take steps to establish a system that ensures the appropriate person or department within the organization timely receives these notices.

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