

Vaccine Incentives and Other Fall 2021 Compliance Impacts

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Recent pandemic-related developments, including those before the Biden Administration's [announcement](#) of a federal vaccination mandate for private sector employers, have had (and will continue to have) a huge impact on employers' health insurance plans and workplace policies in the weeks and months ahead. In our latest webinar, we reviewed three fall 2021 compliance impacts we're monitoring.

Vaccine Incentives and Surcharges – ADA, HIPAA & ACA Implications

In this competitive labor market where employers have been reluctant to impose a vaccine mandate that results in terminations, employers have (as an alternative) become very interested in imposing a premium differential between vaccinated and unvaccinated covered participants.

[Recent guidance](#) from the Departments of Labor, Health and Human Services (HHS), and the Treasury (the Departments) answered some questions that lingered after U.S. Equal Employment Opportunity Commission (EEOC) [guidance](#) said that [employers may require or incentivize employee vaccinations](#). The Departments' new FAQ guidance clarified that a group health plan that provides a premium discount or surcharge (a "premium incentive") designed to incentivize an individual to obtain a COVID-19 vaccination would be considered a wellness program and must comply with HIPAA wellness program regulations.

Additionally, as clarified in the new guidance, such premium incentives for vaccination will be treated as "not earned" by plan participants when calculating the "affordability" of the health plan under the ACA's Employer Shared Responsibility rules ("Employer Mandate"). This means that such premium incentives will result in an increase in the cost of coverage when determining if such coverage is affordable under the Employer Mandate rules.

Watch for fall 2021 compliance impacts on your health and welfare plans and insurance arrangements.

Your employee benefits broker can assist with questions and strategies.

Reevaluating Benefits Strategy

The COVID-19 claims cost impact on employers has been significant and has prompted a reevaluation of benefits strategy. Due to the tight job market and employers' desire to attract and retain employees, employers are working to understand what their employees and job candidates desire most in a benefits plan. This helps them support the programs employees value while reallocating resources from underused or undervalued programs.

By all accounts 2020 was a low claims year for insurers, but 2021 has proved to be much costlier. Carriers are still adding COVID-19 loads to renewals even when they are not using the differed care months to calculate the renewal.



Considering these aspects, we're advising employers to reevaluate and understand their benefits priorities to effectively negotiate for the best outcome.

Workplace Policy

HR teams are busier than ever drafting vaccination policies, mask policies, incentive policies, return-onsite policies and work-from-home policies. They are also grappling with the compliance implications of a workforce that may be more geographically diverse than two years ago. Among other things, this means HR teams are now actively reviewing accommodations for employees who cannot be vaccinated due to disabilities or religious reasons, analyzing leave, insurance and payroll laws and regulations applicable to employees working in new states and localities, and drafting and revising benefits and employment-related policies to better protect against the risks of a more remote workforce.

At the same time, employers recognize that at-home work environments are impacting company culture in different ways, and in some cases increasing employee stress and reducing the effectiveness of their mentoring programs. This is forcing new policies to help support the organization's mission and its workforce as pandemic-related challenges continue.

Many employers are seeking vendors to help implement and enforce these policies. For example, we are seeing more interest in leave and absence management programs with ADA accommodation support, enhanced employee assistance programs, on-site and at-home testing vendors, and manager support and training classes. While the policy details vary due to corporate culture, productivity needs, or industry, the goal is universal: Keeping employees safe and productive and restoring an environment that supports physical and mental health. ■

[For full details, watch the webinar "New BidenCare, Transparency, & COVID Relief Rules – Understanding the Impact" on demand.](#)

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