

Employers may Implement COVID-19 Vaccine Premium Incentives

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On October 4, the U.S. Departments of Labor, Treasury and Health and Human Services issued FAQ [guidance](#) confirming the permissibility of implementing COVID-19 vaccination discounts and surcharges (premium incentives) under employer-provided group health plans to incentivize employees to become vaccinated.

This guidance clarifies that vaccine premium incentive programs (whether offering a premium discount or imposing a surcharge) are considered to be “activity-only” health-contingent wellness programs and must comply with HIPAA wellness program regulations.

If considering a vaccine premium incentive program, examine the potential risks, benefits and logistics.

From these requirements and other applicable guidance, employers and plan sponsors should consider taking the following next steps:

- **Determine the Incentive Limits under the HIPAA Wellness Rules:** If an employer wants to impose a surcharge on unvaccinated employees for group health plan coverage (or reduce the cost of coverage for vaccinated employees), it will need to ensure that the incentive, taken together with all other non-tobacco incentives, does not exceed the 30% incentive limit under the HIPAA wellness rules.
- **Develop Reasonable Alternatives and Reasonable Accommodations:** Employers should establish methods for employees and participants to earn the incentive if they cannot get vaccinated due to a medical reason, disability or sincerely held religious belief (described in the applicable guidance as “reasonable alternative standards” and “reasonable accommodations”).
- **Ensure ACA Affordability Standards are Met:** As clarified in the new guidance, under applicable ACA Employer Shared Responsibility (“Employer Mandate”) regulations, a vaccine surcharge is considered to be “not earned” and can result in an increase of the employee’s share of the cost of coverage for affordability purposes under these rules.
- **Ensure Compliance with Federal and State Government Vaccine Mandates/Executive Orders:** Employers that are federal contractors should make sure that they comply with recent executive orders and guidance issued by the Biden Administration. Private sector employers with 100 or more employees should review the applicable OSHA guidance when it becomes available. Finally, all employers should review and take into account any applicable state laws or mandates that may impact their vaccination program.



While, on the one hand, implementing such a program can incentivize workers to get vaccinated and result in cost savings for the group health plan, if not properly implemented it can result in significant liabilities, including penalties under the ACA's Employer Mandate for not offering affordable health insurance coverage.

Your employee benefits broker can assist with questions and strategies regarding the impact of these developments on your health and welfare plans and insurance arrangements.

For more details on the latest vaccine premium incentive guidance, please see the October 7 Compliance Alert on the [Compliance Resource Page](#). ■

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