

Employers Can Make Plan Premium Discounts or Surcharges Dependent on Vaccination Status

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On October 4, 2021, the Department of Labor, Health and Human Services, and the Treasury released a [jointly prepared FAQ](#) to confirm employers may incentivize employee vaccination by means of benefit plan amendments. The FAQ confirmed that employers may do so by either offering discounts on monthly insurance premiums for vaccinated employees or imposing insurance surcharges for those not vaccinated.

Generally, employers may not charge different premiums under their health plans based on employee health factors. One exception is for activity-only wellness programs. The FAQ has said that mandatory vaccinations can be considered an activity-only wellness program, provided five factors are met:

- Employees must be offered the opportunity to qualify for the program at least once per year;
- The award or penalty cannot exceed 30% of the total cost of employee-only coverage when combined with all other wellness programs;
- The program must be reasonably designed to promote health or prevent disease;
- The program must provide a reasonable alternative to qualify (such as an employee who cannot be vaccinated due to a medical contraindication); and
- The employer must provide notice of the program or the reasonable alternative and information on how to qualify for either.

Employers may not exclude employees altogether from a group health plan based on vaccination status. This exclusion would violate HIPAA's nondiscrimination mandates and is not allowed.

Employers must provide coverage, without cost-sharing requirements, for all COVID-preventive measures, including vaccinations, under the CARES Act. It includes the cost of any future booster doses authorized or approved by the FDA.

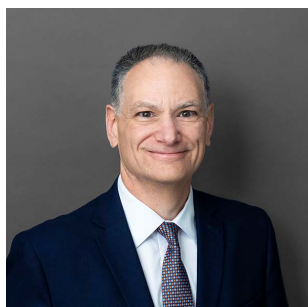
The FAQ notes that premium surcharges are calculated into the meaning of "affordable" under the Affordable Care Act, but premium discounts are to be disregarded. Meaning, employers should still ensure the premium differential does not make their coverage unaffordable under the ACA. A plan is affordable if the lowest-cost, self-only coverage option does not exceed 9.83 percent of an employee's household income.

If you have any questions regarding the FAQ, your insurance plan, or potential discounts/surcharges to be implemented, please contact [Michael J. Crocenzi](#), [Caleb P. Setlock](#), or any member of the [Barley Snyder Employment Practice Group](#).

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