

# Perspective

October, 2021

## **COVID-19 Vaccine Mandates: Considering Monetary Premiums for Unvaccinated Employees**

You may be familiar with or have a tobacco surcharge – a common premium surcharge leveraged by employers to help mitigate health care costs resulting from tobacco use. Now, some employers are looking at similar surcharges for unvaccinated employees along with not paying for sick time for a COVID-19 diagnosis. [Delta Air Lines](#) announced recently it is imposing a substantial health premium surcharge—\$200 per month—on its unvaccinated employees. Also, Delta said [COVID-19 pay protection](#) will only be provided to fully vaccinated individuals who are experiencing a breakthrough infection.

There are many factors under consideration with these kinds of decisions, but there is a potential compliance and fiscal wrinkle that may not be on your radar. There could be ramifications related to how those **surcharges could possibly affect the affordability of an employer's health plan** according to the Affordable Care Act (ACA).

ACA requires Applicable Large Employers (ALEs) to offer affordable health care benefits to eligible employees or pay a premium surcharge. Within the ACA law are very specific rules governing the design of wellness programs, especially regarding incentives (premium surcharges). The big exception under the ACA law is the tobacco surcharge. Employers who institute a tobacco surcharge are able to charge tobacco users up to 50% more for health insurance premiums, if they fail to quit using tobacco products and if they fail to comply with reasonable alternatives, such as completing a tobacco cessation program. Under the ACA, if the employee has cost-free tobacco cessation services, the surcharge is not applied in the affordability calculation.

While there is an exception for tobacco, an [FAQ published on October 4, 2021 from U.S. Departments of Labor, Health and Human Services, and Treasury confirms](#) that premium surcharges for unvaccinated employees is not an exception. Any surcharges will be incorporated when assessing affordability. One way employers might navigate this rule differently is by providing incentives for vaccinated employees instead of penalties for unvaccinated individuals.

# 41% OF EMPLOYEES SUPPORT HIGHER INSURANCE RATES FOR UNVACCINATED WORKERS

## HEALTH PLAN PREMIUM CONSIDERATIONS

Here's how surcharges applied to health plan premiums may impact ACA requirements:

- Under the ACA, the employee premium cost for your lowest-cost plan that meets minimum value must meet affordability guidelines.
- In 2021, affordability is achieved when an employee's cost for health insurance benefits is no more than [9.83% of that employee's household income, 9.61% in 2022](#). This percent is adjusted each year and safe harbors apply.
- Under current ACA guidelines, a premium surcharge for choosing not to be vaccinated against COVID-19 be applied to the cost of your organization's lowest-cost health plan.
- If the cost including the surcharge renders the plan unaffordable, and the employee goes to the exchange and receives a premium tax credit, the employer may be subject to Penalty B. The [\\$4,060 penalty per year](#) can be multiplied by the total number of full-time employees who did not have an offer of affordable coverage and who also receive a premium tax credit.

## QUESTIONS TO CONSIDER BEFORE ISSUING VACCINE SURCHARGES

If your organization is considering a premium surcharge for plan participants who remain unvaccinated, consider some of these questions:

- How much will the surcharge be for employees?
- Does a vaccination surcharge affect other wellness incentives you offer?
- Will the surcharge apply only to your employees who remain unvaccinated or will it include spouses and dependents?
- How far in advance should you give employees notice to have time to get fully vaccinated before implementing the surcharge?
- Will you require proof of vaccination? If so, how are you documenting and storing the records?
- What alternatives will you make available should the vaccination be medically inadvisable or if there is a religious exemption for the participant?
- What protections are in place for the handling of vaccination data and, in some cases, medical data supporting a reasonable alternative standard, some or all of which might constitute protected health information under HIPAA (the Health Insurance Portability and Accountability Act)?

Employers who are considering implementation of a health care premium surcharge or any other penalties related to unvaccinated employees should tap into the expertise available to them, including legal, human resources, brokers, benefit consultants or [ACA solution providers](#) for assistance. For even more insights on this topic and others, subscribe to [The Workforce Wise™ blog](#) for updates, best practices, and tips.

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