

How Businesses Can Mitigate The Physical & Financial Risks of Unvaccinated Employees



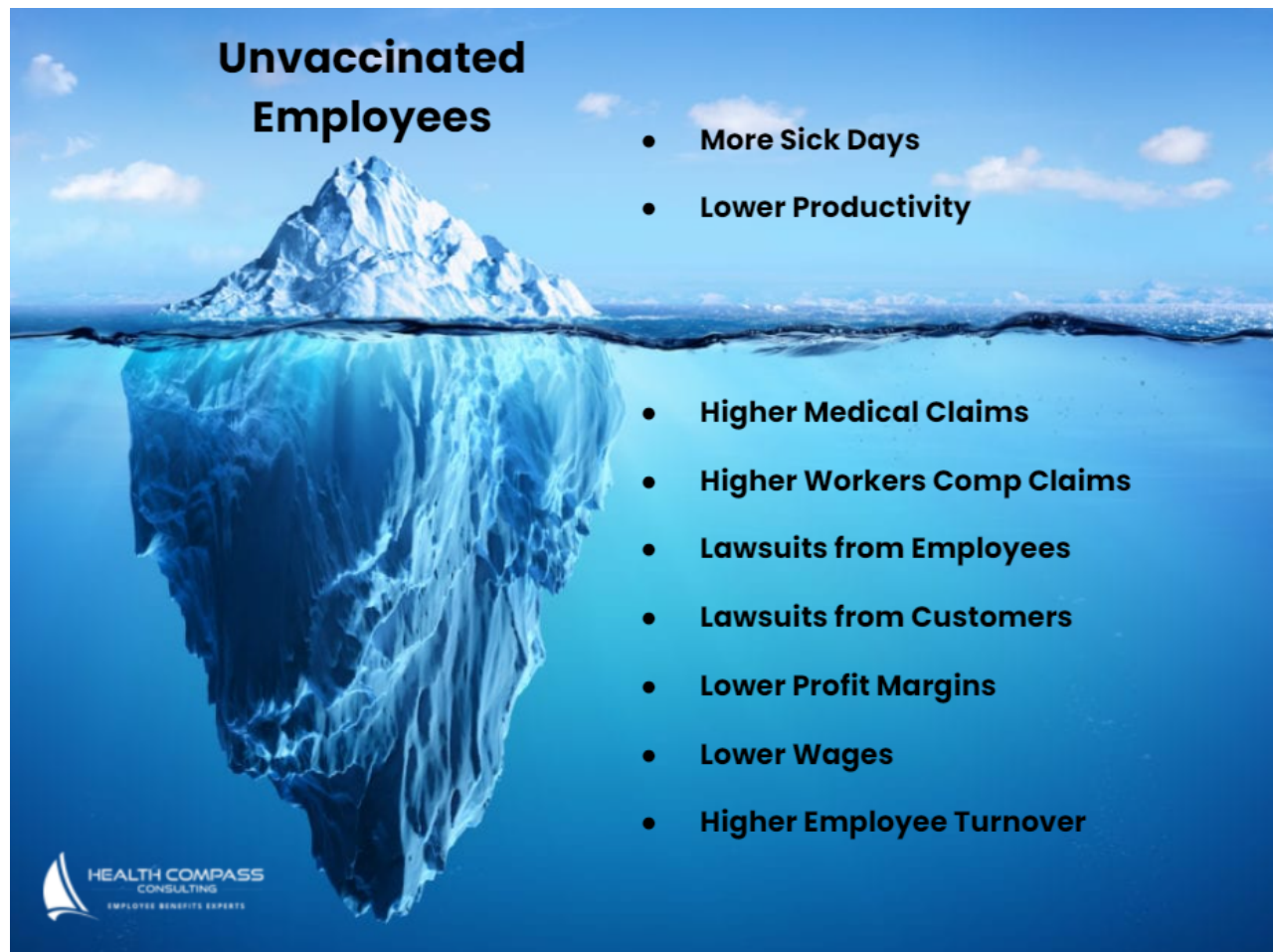
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HOW BUSINESSES CAN MITIGATE THE PHYSICAL & FINANCIAL RISKS OF UNVACCINATED EMPLOYEES

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“If you choose not to decide, you still have made a choice” – Neil Peart (Rush)

A recent [Kaiser study](#) showed that over 100,000 preventable hospitalizations occurred between June and July of 2021, and that unvaccinated employees pose a significant financial threat to organizations regardless of size or industry.

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Since commercial health plans pay an average of [+241% of Medicare reimbursement rates](#), the [average cost](#) of hospitalization for each unvaccinated Covid-19 patient is approximately **\$57,919** dollars.

Impact on Commercial Health Plans:

- **Fully-Insured Plans:** Small and mid-size businesses that buy “fully-insured” health plans often have a “pooling point” (specific deductible) of \$30,000 to \$50,000 dollars. This means that the average Covid-19 hospitalization will exceed that pooling point, qualify as a “large claim,” and most-likely result in higher rate increases at renewal time. Even before the elevated financial risk to plans caused by Covid-19, fully-insured [premiums had risen over 55%](#) and deductibles had risen over 111% since 2010. Companies who continue to buy fully-insured health plans will most likely be forced to shift more expenses onto employees and/or erode profits by absorbing rising premiums.
- **Partially Self-Funded & Level-Funded Plans:** These plans often have a specific deductible of \$50,000 dollars -- or more -- on each member. This means that the employer is responsible for paying claims up to this threshold, and every dollar spent doing so comes right out of the company's bottom-line. Healthcare utilization that exceeds the specific deductible threshold usually results in higher stop loss (reinsurance) premiums at renewal. Although premium increases on stop loss insurance typically cost less than increases on fully-insured plans, they still pose a threat to businesses and employees.
- **Self-Funded Plans:** These plans have unlimited liability, and every dollar used to pay claims related to unvaccinated employees and dependents comes right out of their bottom line. If an unvaccinated member has a \$500,000

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dollar claim, the plan -- composed of employer and employee contributions -- is responsible for the full payment.

Before we address the risk-management policies available to businesses under the May 28th, 2021 EEOC guidelines, executives should ask themselves these questions:

1. How much net profit are you willing to give up in order to treat unvaccinated employees with severe symptoms? It's important to keep in mind that health insurers don't take on any risk. Whether your company is fully-insured, self-funded, or anything in between, increased utilization caused by unvaccinated employees is going to hurt your bottom line with claims and possibly higher renewal rates.
2. Is it fair that vaccinated employees will largely subsidize the medical costs of unvaccinated coworkers? Within many organizations, employees fund a large portion of the company's overall healthcare spend, so it's important that we consider the moral and financial implications of how unvaccinated employees are affecting the rest of your population in terms of higher premiums for everyone, even the vaccinated.
3. What is your cash position, and how might you adjust medical stop loss policies (reinsurance) in order to achieve greater optimization?
4. If your organization's health plan is "fully-insured," how will large claimants impact next year's renewal, and how would your organization respond to a +40% health insurance renewal? What would you do?

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5. How much top-line growth are you willing to give up because of absenteeism and lower productivity caused by unvaccinated employees?
6. How much operational disruption are you willing to accept due to employee absenteeism resulting from unvaccinated employees who may be out of work longer if infected with COVID-19?
7. A more important question is how much operational disruption are your *customers* willing to accept because of staffing issues associated with unvaccinated employees who may be out of work longer if infected with COVID-19?
8. How is your company effectively competing for talent in today's competitive marketplace? Are candidates asking about personal safety initiatives?
9. How will implementing policies around vaccinations (or not) impact your ability to attract and retain talent? Are your current employees posting their concerns online? Do you know?
10. How will your most valued knowledge workers respond to your vaccine policy?
11. Are your knowledge workers inherently more at risk from Covid-19 than other workers?
12. How many different generations are in your workforce, and how will each of them (generally) respond to your company's vaccination policy?
13. How does your organization define "risk," and what is your tolerance to it?

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14. What legal implications and risks might arise if a judge concludes that your company has not taken sufficient steps to protect employees in accordance with OSHA, the NLRA, and other federal or state laws?
15. If it's determined that an employee was infected on the job and suffers loss, how will that affect workers compensation rates? What other liabilities might this expose you to? What if OSHA shuts you down?

Now that you've put a light on some possible blindspots and more clearly defined standards of value within your organization, let's take a look at what legal policy options are available to you.

Option #1) Do Nothing – While maintaining the status quo may be the easiest in the short-term, it is by far the riskiest. Loss of productivity, exposure to lawsuits due to intentional lack of compliance with health and safety laws, and increasing healthcare costs are all likely coming your way, and when they do, you will be forced to take action.

Option #2) Allow Employees to Wear Masks – Your policy should be that all workers are allowed to wear masks even if vaccinated, and all workers should be educated about the possibility of contracting COVID-19 even if vaccinated. Workers should also be allowed to ask their coworkers to “mask up” when working in their physical presence and coworkers should be informed that if they are asked to mask up, they must comply. Furthermore, employees should be educated on the fact that they cannot ask a coworker if they are vaccinated or why they are not vaccinated.

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Option #3) Provide a Reward - Perhaps the gentlest way to promote vaccinations and mitigate risk is to pay a reward to those who show proof of vaccination by a certain date. It's important to store this information separately from regular personnel files. Have a protocol to keep employee vaccine-status information private. If the vaccine is being administered by the employer or its agent (i.e., an onsite clinic), the incentive may not be ["so substantial as to be coercive."](#) If your company is administering the vaccine internally since you are a healthcare provider, be sure to have HIPAA authorizations signed as you will need to gather some medical information from employees during the screening process. Keep in mind that some of the questions may have ADA implications.

Option #4) Impose an Unvaccinated Surcharge - Smoking surcharges have been a common practice among health plans for decades, and charging unvaccinated employees more to be on the company health plan would be no different. Again, it's important to store this information separately from regular personnel files. Have a protocol to keep employee vaccine-status information private.

Note: Delta Airlines [recently announced](#) that they are imposing a \$200/month surcharge on unvaccinated employees. According to Delta's CEO, the average cost of hospitalization for unvaccinated Delta employees is \$50,000 dollars each.

Option #5) Optimize Your Health Plan - Seeing that 25% of what most companies spend on healthcare is considered waste, companies should be actively looking for ways to reduce costs and mitigate risks by improving benefits for employees. Given the failed cost-shifting schemes many companies have tried over the past 10 years, this may sound counter-intuitive, but the reality is that companies can save money by breaking down barriers to care and helping employees find high-quality healthcare that often costs less than low-value care.

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Option #6) Mandate Vaccinations for All Employees – This is the most controversial option, but to date, it's the most effective way of mitigating the risks associated with Covid-19. Before implementing this policy, it's important to consider the culture of your employee population because some populations will look much more favorably upon this policy than others. Seeing that we're currently experiencing the [tightest labor market in decades](#), don't be surprised when some employees quit to join organizations that do not require vaccinations. Of course, individualized exceptions and accommodations can and should be made for religious or disability reasons.

Spouses & Dependents: Since spouses and dependents usually account for approximately 50% of the population enrolled in corporate health plans, employers providing vaccine incentives should consider extending the incentive to spouses and dependents. It's important for companies who administer vaccines themselves or through their agent to get voluntary, written authorization from family members.

Per EEOC guidelines, employers with mandatory vaccine requirements cannot extend this requirement to spouses and dependent children even if they are enrolled in the company's health plan.

Exceptions: The EEOC cautioned that employers must still provide reasonable accommodation for employees who are exempt from a vaccination mandate under the ADA and Title VII of the Civil Rights Act, unless this accommodation poses an undue hardship to the employer's business. According to [Fisher Phillips](#), "Alternative ways to earn the incentive might be watching a workplace COVID-19 safety video or reviewing CDC literature on mitigating the spread of COVID-19 in the workforce."

Privacy: Many people falsely believe that the HIPAA Privacy Rule covers medical information at work, however, that is incorrect. The Privacy Rule controls how a health

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plan or a covered health care provider shares your protected health information with an employer. The Privacy Rule does not protect your employment records, even if the information in those records is health-related. In most cases, the Privacy Rule does not apply to the actions of an employer.

Companies *may* still have a legal obligation to protect the confidentiality of employee health information in their possession under the US Privacy Act of 1974 (federal agencies), the Americans with Disabilities Act (ADA), and the Family & Medical Leave Act (FFCRA/ ARPA) to name a few, as well as state-level regulations relating to data protection.

Therefore, the safest option is to have everything related to an employee's COVID-19 symptoms, illness, vaccine status, or vaccine refusal treated as private information unless there is a *legitimate* business reason to know.

Note: At the date of this article, there are very specific [OSHA standards](#) for healthcare workers and a separate set of standards for non-healthcare workers.

In Conclusion: Businesses need to carefully measure their individual risk-tolerance, needs, and culture before making a decision about vaccination policies. Those who choose wisely and implement and manage effectively will prevent physical and financial loss and gain a competitive advantage over those who do not.

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