

Exhibit 353

“How to” Guide for Health Plan Premium Incentives for the COVID-19 Vaccine

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“How To” Guide for Health Plan Premium Incentives for the COVID-19 Vaccine

20 October 2021 | [Coronavirus Resource Center:Back to Business](#) | [Blog](#)

Author(s): [Nick J. Welle](#)



Health plan wellness programs may generally include a health plan premium incentive discount for those who have received the COVID-19 vaccine(s) or, alternatively, a premium surcharge for those who are not vaccinated. Recently, the applicable regulatory agencies released a [set of FAQs](#) addressing this topic.

Below we provide a high-level “how to” guide on adding a vaccine premium differential incentive, whether a premium discount or surcharge, to your wellness program, based in part on these recent FAQs. Of course, this list is not exhaustive.

1. Determine the incentive amount

As explained in more detail in a [prior Blog post](#) and [chart](#), applicable law governing wellness programs imposes a maximum incentive of 30% of the total cost of employee-only coverage (or 30%

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2. Make uniform offers

Offer the same vaccine incentive to all similarly-situated employees (for example, all employees at the same worksite).

3. Decide timing

Consider by when you want to require the vaccine(s) to be obtained in order to receive discounted coverage. The easiest way to do this is to require the vaccine by a certain date before the end of the plan year, and then implement discounted premiums for the new plan year. You will want to provide enough runway for employees to get vaccinated (e.g., some vaccines require two dosages spread out over time) or to satisfy the reasonable alternative standard, described below (e.g., if a reasonable alternative standard is attending classes, you will want to provide enough time to complete these classes).

4. Tell your employees

Inform your employees in time for them to get vaccinated, or satisfy a reasonable alternative, before you implement the discount. If you are implementing a surcharge, then tell your employees during open enrollment and implement the surcharge for the new plan year.

5. Give formal notice and an offer of a reasonable alternative

The notice should be based on the [HIPAA sample wellness program notice](#) (see page 25); for example,

“Your health plan is committed to helping you achieve your best health. A reward of a reduced premium for providing proof of receipt of the COVID-19 vaccine is available to all employees enrolled in the health plan. If you think you might be unable to receive the vaccine, you might qualify for an opportunity to earn the same reward by different means. Contact us at [phone number] and we will work with you (and, if you wish, with your doctor) to find a COVID-19 preventive measure with the same reward that is right for you in

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For employees who do not get vaccinated by your deadline, give them a new opportunity to get vaccinated and get the incentive at least once per year (ideally, align with your open enrollment each year, to the extent your vaccine premium incentive still applies for future years).

Don't stop reading yet!

Watch your "affordability" math: When determining whether you are offering "affordable" coverage to your employees under the Affordable Care Act, you generally need to use the full, undiscounted premium amount for every employee, including your vaccinated employees (special rules apply to tobacco cessation incentives, not relevant here).

Be discreet: Proof of vaccination and other information collected should be kept confidential and not part of the employee's main employment record. It should only be accessible by the limited people who need to use that information to run the wellness incentive program.

Discount now, but don't implement a "surcharge" until the change of the plan year: If you want to start charging a different amount in the middle of your plan year, then you should use a premium discount instead of a surcharge (or retain counsel to research your specific state labor laws). This is because your employees already gave you permission to deduct the specific premium amount from their paychecks for the plan year during the prior open enrollment period. Increasing the amount taken out without further employee permission may violate your state's labor laws.

Don't require shots on-site: Allow people to get the vaccine from any provider and then produce proof of that vaccine to you (as opposed to running your own vaccine clinics and requiring vaccination at such clinics). If you require employees to get vaccinated at an employer-administered vaccine clinic, then additional incentive limits apply (as discussed in Foley's prior Insight found [here](#) and in [EEOC Q&A K.17](#)).

Consider your union: If your employees are part of a union, check the collective bargaining agreement and assess whether the vaccine premium differential would be prohibited under the agreement before attempting to implement such a program.

Accommodate for religious objections: Applicable law requires you to consider and provide reasonable accommodations based on legitimate religious objections, similar to those religious

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Author(s)



Nick J. Welle

Partner

nwelle@foley.com

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