

COVID-19 Vaccine Approval

by FDA Brings New Opportunities

The Pfizer-BioNTech COVID-19 Vaccine received FDA approval on August 23, 2021. Marketed as “Cominarty,” it is the first FDA approved vaccine for individuals 16 and older to prevent the COVID-19 disease.

- Employers can now mandate that employees receive the COVID-19 vaccination and can provide incentives to their employees if they follow the Equal Employment Opportunity Commission’s (EEOC) guidance released May 28, 2021.
- The EEOC’s updated guidance requires employers to abide by the laws governing ADA compliance, and Title VII of the Civil Rights Act of 1964.
- In July, the Biden Administration reached out to employers to encourage vaccine mandates and offer incentives to motivate people to be vaccinated against COVID-19.

WHAT YOU NEED TO KNOW:

Self-Vaccination

This type of information is categorized as “medical information” and must be treated as confidential and protected health information and not be filed as part of an employee’s personnel record. Be sure to have a safe and protected area in which to keep these records.

Incentives and Penalties

If you choose to join a growing body of employers looking for a more assertive option The penalty or surcharge cannot be considered substantial to the point that it can be considered coercive. The EEOC did not provide clarity on what is considered substantial or coercive. As such, seek guidance from your legal counsel. Examples of recent employer incentives:

EMPLOYERS OFFERING BENEFITS:

- Intel: \$250.00
- State of Wisconsin: \$100.00 gift card
- McDonald's up to 4 hours PTO
- Publix: \$125.00 gift card
- Bolthouse Farms \$500.00 bonus
- Kroger: \$100.00

EMPLOYER SURCHARGE CONSIDERATIONS

- The Affordable Care Act does not allow insurers to charge a higher premium to people who are not vaccinated; however, employers can add a surcharge through their wellness program.
- Healthcare premium surcharges are gaining momentum as an alternative to incentives since the FDA approved Cominarty.
- Delta airlines announced on August 25, 2021 that it will impose a \$200 monthly healthcare surcharge for the unvaccinated and weekly testing beginning November 1, 2021.
- The EEOC did not offer and clear guidance on surcharges; however, it would need to be administered through your wellness program (similar to tobacco use).
- If you choose to implement a surcharge, it must be HIPAA compliant, so consult with your legal counsel for the best course of action.
- The National Law Review August 10, 2021 article offers helpful guidance

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