

# Electronic Alert

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## **The Other Delta: The Delta Airlines Vaccine Surcharge & What a Surcharge Could Look Like for Your Business**

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Delta Airlines recently made headlines stating it would require all employees who remained unvaccinated against COVID-19 to pay a \$200 surcharge on their company health insurance premiums. Delta Airlines stated it was taking this step due to the high cost of treatment related to COVID-19 patients and its belief that those costs could be prevented through vaccination.

Most companies do not have 75,000 employees across the world, and the impact of COVID-19 costs to a company's bottom line will vary. However, there is no question that high healthcare costs will impact the health insurance costs for a company whether that is through renewal of a fully-insured health plan or more directly through claim payments by self-insured group health plans.

In recent weeks, we have seen many questions around vaccine mandates vs. surcharges vs. taking no action to encourage or discourage vaccination. This E-Alert is not intended to recommend any specific approach, but rather to help provide some clarity around the reasons behind Delta's recent actions as well as some legal background for those considering surcharges in their own workplaces.

Unlike a vaccine mandate, health plan surcharges associated to vaccine status fall within the existing structure of wellness program rules housed within the Americans with Disabilities Act (ADA), the Affordable Care Act (ACA), the Genetic Information Nondiscrimination Act (GINA), and guidance from the Equal Employment Opportunity Commission (EEOC). When a surcharge is designed within these rules, it allows employers to charge employees who do not take defined health steps more for their health insurance coverage than employees who opt to take those steps. Safeguards are still of course required for those with medical and religious barriers to vaccination, but for employers looking for a way to gently encourage vaccination, wellness programs can offer the right type of gentle nudge. In particular, wellness programs to promote COVID-19 vaccines can help employees understand the effect their personal decisions may have on cost consequences to the group health plan as a whole, and recognize the link between behavior choices and company health insurance costs.

*To learn more about vaccine incentives and mandates contact Iris Tilley or Jeff Robertson at 503-276-2155 or 503-276-2140, or at [itilley@barran.com](mailto:itilley@barran.com) or [jrobertson@barran.com](mailto:jrobertson@barran.com). You can also learn more about vaccine mandates and incentives by registering for our upcoming Annual Employment, Labor, Benefits, & Higher Education Law Seminar: "[Barran Liebman's HR Open](#)."*