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Inoculating Against Risk: Issues to Consider With COVID-19 Vaccination Incentives

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As national COVID-19 vaccination efforts accelerate, many employers are considering ways to incentivize their employees to receive the vaccination when it becomes available. Vaccination incentives can take many forms. For example, some employers might consider using a wellness program to offer a health plan premium reduction to employees enrolled in the employer's health insurance if they receive the vaccine. Such an incentive may be less costly overall than providing direct cash incentives. This Client Alert provides a general overview of initial issues to consider when designing vaccination incentives.

What is the amount of the incentive and how will it be provided?

Factors to consider in determining an incentive amount include the employer's available resources, the incentives (if any) similar employers are offering, and the amount that will be sufficient to entice employees to complete the vaccination regimen. If the incentive is offered through a wellness program (discussed below), the amount of the incentive must also satisfy the applicable Health Insurance Portability and Accountability Act ("HIPAA"), Americans with Disabilities Act ("ADA"), and Genetic Information Nondiscrimination Act ("GINA") limits for wellness program rewards. Depending on how the incentive is structured, it may be a group health plan, a wellness program, or an ERISA welfare benefit plan with related compliance obligations.

Next, employers should determine how the incentive will be paid. Common payment methods include offering cash bonuses, gift cards, or prizes (such as fitness trackers), providing additional paid time off hours, or subsidizing health insurance costs.

Does the incentive constitute a wellness program?

Some incentives, such as an employer paying part of an employee's health plan premium if the employee receives the vaccine, constitute a wellness program. An employer might choose to offer that type of incentive to obtain the favorable tax treatment for employer-provided health coverage. If the incentive is offered through a wellness program, it must comply with the complicated HIPAA, ADA, and GINA wellness program rules. Plan documents will need to be amended to add the immunization incentive.

Contacts

John E. Schembari
Omaha
402.231.8886
john.schembari@kutakrock.com

Michelle M. Ueding
Omaha
402.661.8613
michelle.ueding@kutakrock.com

William C. McCartney
Irvine
949.852.5052
william.mccartney@kutakrock.com

P. Brian Bartels
Omaha
402.231.8897
brian.bartels@kutakrock.com

Cindy L. Davis
Minneapolis
612.334.5000
cindy.davis@kutakrock.com

Alexis L. Pappas
Omaha
402.661.8646
alexis.pappas@kutakrock.com

Ruth Marcott
Minneapolis
612.334.5044
ruth.marcott@kutakrock.com

Amanda R. Cefalu
Minneapolis
612.334.5000
amanda.cefula@kutakrock.com

Jeffrey J. McGuire
Omaha
402.661.8647
jeffrey.mcguire@kutakrock.com

Sevawn Foster Holt
Little Rock
501.975.3120
sevawn.holt@kutakrock.com

Nathan T. Boone
Minneapolis
612.334.5014
nathan.boone@kutakrock.com

John J. Westerhaus
Omaha
402.231.8830
john.westerhaus@kutakrock.com

Daniel C. Wasson
Omaha
402.346.6000
daniel.wasson@kutakrock.com

Emily P. Dowdle
Omaha
402.661.8683
emily.dowdle@kutakrock.com

James E. Crossen
Minneapolis
612.334.5000
jim.crossen@kutakrock.com

Is the incentive taxable and how does it affect other benefits?

Cash bonuses and gift cards are typically included in employees' income and subject to income and employment taxes. Including an incentive in employees' income could result in additional employer contributions for benefits that are tied to compensation, such as 401(k) plan matching contributions. Employers should ensure their payroll systems are properly programmed to address incentive payments and how they are treated for tax and employee benefit purposes.

Must incentives be provided to employees who decline to be vaccinated?

Employers must plan for employees who are not able to receive the vaccine, for example, those with medical conditions, disabilities, or religious beliefs that prevent them from receiving medical treatments. Depending on how the incentive is structured, an employer may be required to provide accommodations or alternative ways for employees to receive the incentive if they are unable to be vaccinated.

Which employees will be eligible for the incentive?

Some employers may offer the incentive to all employees, while others may offer the incentive only to certain classes of employees (such as frontline workers). Employers should ensure the classification it uses complies with various laws, including those relating to employment-based or health-based nondiscrimination.

How will employees demonstrate they received the vaccine?

A common example is requesting proof (such as a vaccination card) showing the employee's name and identifying information, vaccine information, and dates of vaccination. Asking employees for medical- or disability-related information raises potential issues under various laws, including the ADA, GINA, and other employment laws. Equal Employment Opportunity Commission guidance explains permissible ways to confirm whether an employee has been vaccinated that are helpful in developing an incentive arrangement.

How will records be maintained?

Employers requesting proof that employees have received all doses of the COVID-19 vaccination will need to ensure such documentation is properly stored and maintained. Employers must consider how an employee's vaccination status (and any related records) will be kept confidential, for instance in separate locked files that can be accessed only by authorized personnel. Depending on how the incentive is offered, confidentiality and recordkeeping requirements under various laws, such as the ADA and HIPAA, must be considered.

Next Steps.

If you have any questions about designing a program to incentivize your employees to receive the COVID-19 vaccination, please contact a member of the Kutak Rock [Employee Benefits Practice Group](#).

