



**Questions and Answers from  
“Take Your Best Shot: Compliance Considerations of COVID-19 Vaccine Incentives”  
September 1, 2021**

*\*\*Please note that these questions and answers address topics that were not thoroughly discussed during the presentation or in other resources we have already provided. Review those resources for more detailed guidance on the practice of incentivizing the vaccine. All resources provided by NFP Benefits Compliance serve as educational guidance; consult with legal counsel before implementing a particular program or plan design.\*\**

**Q1: Under the Americans with Disabilities Act (ADA), what are some examples of valid medical exemptions?**

A1: An employer should not attempt to determine whether a specific health condition is a valid exemption to getting the COVID-19 vaccination. If the employee’s health provider has indicated that the vaccine is medically inadvisable for them, then the employee should be accommodated relating to any requirement or incentive. An employer may request medical documentation supporting the employee’s request for accommodation.

**Q2: Under the ADA, what are examples of valid religious exemptions?**

A2: Under EEOC rules and guidance, the definition of religion is broad and protects beliefs, practices, and observances with which an employer may be unfamiliar. If an employee indicates that they are prevented from receiving the COVID-19 vaccine because of a sincerely held religious belief, practice, or observance, the employer should generally assume that the employee’s request for religious accommodation is sincere. An employer may request a self-certification as documentation. However, if the employer is aware of facts that provide an objective basis for questioning the sincerity, the employer may request additional information for support.

**Q3: Does reasonable accommodation or an alternative standard have to be provided to any unvaccinated employee or only those who are requesting an exemption based on a health condition or religious beliefs?**

A3: Under the EEOC and HIPAA rules, an employer is only required to consider and accommodate employees who are prevented from receiving the COVID-19 vaccine due to medical advice or a sincerely held religious belief, practice, or observance.

**Q4: What are examples of reasonable accommodation or an alternative standard for those who are unable to receive the COVID-19 vaccine?**

A4: [Guidance](#) released on October 4, 2021, from HHS, IRS, and DOL (collectively, the Departments) provides that an individual attesting that they comply with the CDC’s mask guidelines for unvaccinated individuals is an example of a reasonable alternative standard under HIPAA. In addition, the EEOC has generally opined those reasonable accommodations for those who are unable to receive the COVID-19 vaccine or alternative standards may involve telework, reassignment of duties, wearing of a mask, relocation of a workstation or periodic COVID-19 testing.

**Q5: May an employer provide vaccinated employees with a reduction in healthcare premium contributions?**

A5: This practice is permissible, but must be administered in compliance with HIPAA’s wellness rules applicable to health-contingent activity-only wellness programs. This includes, among other requirements, that the program is reasonably designed to promote health or prevent disease; the reward (together with any other rewards for other health-contingent wellness programs) must not



exceed 30% (or 50% for tobacco related wellness programs) of the total cost of employee-only coverage; a reasonable alternative standard be available to those who show that it is unreasonably difficult to comply due to a medical condition (or medically inadvisable to satisfy the otherwise applicable standard); and disclosure of the reasonable alternative in all plan materials describing the wellness program. . Any employer that may be considering doing this should consult with outside counsel for advice.

**Q6: May an employer offer additional HRA contributions to vaccinated employees? How about HSA contributions? How about reduced deductibles under the health plan?**

A6: All of these practices are a form of an incentive tied to a health plan. The HIPAA rules and considerations discussed in Question #5 would be applicable. Additionally, any time an employer varies benefits or contributions for categories of employees, they will want to make sure that they are not inadvertently discriminating in favor of highly compensated individuals under Sections 105 and 125.

**Q7: If a premium surcharge/ discount is implemented by an applicable large employer based on COVID-19 vaccination, how does this impact affordability under the employer mandate?**

A7: If a wellness program incentive or penalty is based on tobacco utilization, the employer may use the lower premium amount for affordability purposes under the employer mandate. Since COVID-19 vaccination is not tied to tobacco use, the employer must use the higher premium amount for affordability purposes. In other words, the employer must treat all employees as if they are not vaccinated for affordability purposes. If this results in the employee's coverage being deemed unaffordable, the employer risks being penalized by the IRS if any employee enrolls in coverage on the exchange.

**Q8: What are the rules for maintaining COVID vaccination status records?**

A8: The ADA considers this information to be confidential medical information, and it must be retained for a period of at least one year and must be kept separately from other personnel files. State laws may also impose requirements on these types of documents. Consult with legal counsel to analyze your obligations in this regard.