

COVID-19

# Christine Keller Discusses COVID-19 Vaccine Program Guidance for Health Plans With SHRM

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[Christine Keller](#) was quoted in the recent Society for Human Resource Management (“SHRM”) article, “Premium Surcharges for Unvaccinated Health Plan Participants Are Lawful Within Limits” where she discussed new guidance outlining the extent to which employers can provide incentives to, or impose surcharges on, their health plan participants who have not received a COVID-19 vaccine.

“The decision to treat a vaccine incentive or surcharge program as an activity-only program means that employers are now limited with respect to the level of surcharge [or incentive] that they can impose,” said Keller.

Employers that wish to impose premium surcharges will “have to develop reasonable alternatives to vaccination, which may be administratively burdensome and unworkable in practice,” she said.

While premium surcharges are lawful under the guidance, they must comply with nondiscrimination rules under the Health Insurance Portability and Accountability Act (“HIPAA”), Keller said.

If a vaccine surcharge or incentive program had been designated a participatory program, no maximum dollar limits would have applied to the amount of a vaccine surcharge or incentive, Keller noted. But if a program is health-contingent, the total incentives across all nontobacco wellness programs—including the vaccine surcharge—cannot exceed 30 percent of the total cost of the medical plan coverage in which the employee is enrolled.

There were good arguments that an incentive program is a participatory arrangement if participants simply need to show proof of vaccination to get an incentive or avoid a surcharge, Keller said. Classifying such an incentive program as participatory would have encouraged more employees to get vaccinated.

The reward for the activity-only wellness program, together with the reward for other health-contingent wellness programs with respect to the plan, must not exceed 30 percent of the cost of coverage. For an incentive or surcharge that applies only to the employee, the cost of coverage is the employer-plus-employee share of the cost of self-only coverage that the employee receives. If the incentive or surcharge applies to

the spouse and/or dependent, the cost of coverage is the employer-plus-employee share of family coverage that the family receives, Keller noted.

Employers need to offer reasonable accommodations to those employees who say they cannot be vaccinated because of a disability-related or religious objection. Keller said that the U.S. Equal Employment Opportunity Commission has outlined accommodation rules in the context of vaccine mandates—rules that “presumably also apply to incentives and surcharges.”

[Click here](#) to read the article.