



# Companies eye financial penal for unvaccinated workers

BY KARL EVERS-HILLSTROM - 08/31/21 06:00 PM EDT

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Companies are considering more aggressive alternatives to vaccine mandates after Delta Air Lines announced last week that it would implement a \$200 monthly surcharge on unvaccinated employees enrolled in the company's health care plan.

Delta's announcement intrigued firms that are eyeing stronger incentives to get employees vaccinated. Those companies view the surcharge approach as a way to boost vaccinations without having to lay off workers or take other disciplinary action against those who refuse to get the shot.

But some employers are concerned that hiking health care premiums or imposing other financial penalties could create administrative and regulatory burdens, and even prompt anti-vaccine employees to find work elsewhere amid record job openings.

"Lots of employers are very interested in this; none of them have pulled the trigger," said Judith Wethall, a partner at McDermott Will & Emery who advises corporate clients on health benefits. "It's being very carefully thought out and vetted."

Several major corporations rolled out vaccine mandates or stricter restrictions on the unvaccinated in recent weeks following a spike in COVID-19 cases that threatened workplace safety and saddled employers with enormous health care costs.

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Delta CEO Ed Bastian, in an all-staff letter last week announcing the new coronavirus restrictions, said that each unvaccinated employee hospitalized with COVID-19 cost the company an average of \$50,000.

“We’ve always known that vaccinations are the most effective tool to keep our people safe and healthy in the face of this global health crisis,” he said. “That’s why we’re taking additional, robust actions to increase our vaccination rate.”

COVID-19 hospitalizations involving unvaccinated patients in June and July cost the U.S. health system \$2.3 billion, according to an [August analysis](#) by the Kaiser Family Foundation.

“Our members are absolutely concerned about the costs they’ve absorbed and will continue to absorb over time due to COVID. That is going to raise premiums,” said Elizabeth Mitchell, CEO of the Purchaser Business Group on Health, a health care group that represents major employers such as Walmart, Microsoft and Costco.

“But most importantly, they’re focused on keeping their employees safe,” she added, noting that 13 of the group’s members have implemented vaccine mandates.

Employers that don’t implement tougher vaccine rules risk endangering their employees, but those that impose stricter rules might lose workers who decide to take advantage of the [record 10.1 million job openings](#) in the U.S., according to Labor Department data from the end of June.

“If a company feels that it can prevent the spread within their facility, combine that with a fear of losing labor, that leads to the decision many of them are making,” said Geoff Freeman, president of the Consumer Brands Association, which represents companies like General Mills and Coca-Cola.

Freeman said that workplaces with substantial risk of COVID-19 transmission, such as meatpacking plants, are more likely to implement vaccine restrictions. But some manufacturing facilities that have more space for social distancing have been able to keep the virus under control without doing so.

For months, corporations promoted incentives such as pay bumps and paid time off to get employees vaccinated. Delta’s health insurance surcharge is a new kind of incentive that punishes unvaccinated workers rather than reward those who roll up their sleeves for the shot.

In many ways, enacting a companywide vaccine mandate is simpler than hiking employees’ health insurance premiums. Surcharges are implemented as an “employer wellness program” under the 2010 Affordable Care Act, which allows employers to either hike or reduce an employee’s health insurance premium by no more than 30 percent.

The plan must comply with several different federal laws governing health privacy and disability rights, while also surviving Equal Employment Opportunity Commission rules and state and local laws.

“While straight mandates might be more draconian, they are less of a regulatory obligation,” Wethall said.

Some experts have also expressed concerns that imposing the same kinds of penalties as Delta could cause employees to withdraw from the

employer-based health care plan, leaving them unvaccinated and uninsured during a deadly pandemic.

So far, Delta is the only major company to publicly announce increased health insurance premiums on unvaccinated workers.

Meanwhile, vaccine mandates are on the rise. An [August study](#) from benefits consulting firm Mercer found that roughly 14 percent of employers will require their workers to be vaccinated before returning to the workplace. That's up from just 3 percent in May, when COVID-19 cases appeared to be on the decline.

The Food and Drug Administration (FDA) approved the Pfizer-BioNTech vaccine last week, a move that swiftly [triggered new vaccine requirements](#). That same day, [President Biden](#) urged the private sector to mandate vaccinations.

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"If you're a business leader, a nonprofit leader, a state or local leader, who has been waiting for full FDA approval to require vaccinations, I call on you now to do that," he said.

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The wave of new vaccine requirements may be having an effect. An [Axios-Ipsos poll](#) published Tuesday found that 20 percent of Americans said they are either not very likely or not likely at all to get the vaccine, a new low. Of those respondents, 43 percent said they would likely get vaccinated if their boss required them to, up from 33 percent a month ago.

Still, the vast majority of private employers still don't have vaccine restrictions in place, with many executives waiting to see which vaccine rules prove to be most effective.

"One lesson of COVID is to not lock yourself into anything. We're all humble enough now to realize that this is an evolving situation, that we've got to roll with the punches. For those companies that have not put a mandate in place, they're evaluating all of their options," Freeman said.

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