Kirsten Garcia Talks With Bloomberg Law About Employer Penalties for Unvaccinated Workers

By Kirsten H. Garcia | August 26, 2021

RELATED PRACTICES Government Audits and Investigations, Health and Welfare Plans, Plan Fiduciaries Counseling, Retirement Plans, Employee Benefits and Executive Compensation

Haynes Boone Counsel Kirsten Garcia talked with *Bloomberg Law* about considerations for companies that penalize unvaccinated workers.

Below is an excerpt:

A plan by Delta Air Lines Inc. to penalize unvaccinated workers underscores the dilemma faced by employers that want inoculated workers without triggering the practical problems associated with absolute vaccinate-or-terminate mandates, such as firing employees who are both noncompliant and difficult to replace.

The Atlanta-based airline announced Wednesday that it plans to assess a $200 monthly surcharge to unvaccinated workers who are part of the company's health-care plan. Imposing that type of penalty can have implications under laws governing wellness programs and anti-bias protections, legal observers said.

Legal Complications

The airline's surcharge plan echoes the well-established policy of charging workers who smoke tobacco more for their health-care plans than workers who don't smoke.

Companies that base additional employee health-plan costs on Covid-19 vaccination status must consider the rules for employee wellness programs, said Kirsten Garcia, a Haynes Boone attorney who counsels employers on health plans.

Employers must provide reasonable alternatives—something that's achieved through smoking cessation programs in the tobacco context—but it isn't immediately clear how that would work when it comes to Covid-19 vaccines, Garcia said. Total surcharges are also capped, meaning that imposing costs for lack of vaccination could force an employer to dial back surcharges linked to other issues, she said.

To read the full article, click here.

© 2026 Haynes and Boone, LLP