1. IS IT PARTICIPATORY OR HEALTH-CONTINGENT?

a. **Participatory**: not based on standard related to health factor, e.g., get $10 off premiums for attending nutrition seminar, complete health risk assessment form

   A few have argued vaccine surcharge fits here; would mean no limit on surcharge.

b. **Health-Contingent**: must satisfy standard related to a health factor

   Most agree vaccine surcharge fits here.

2. IF HEALTH-CONTINGENT, IS IT ACTIVITY ONLY OR OUTCOME BASED?

a. **Activity Only**: e.g., complete walking exercise program if your BMI is high

b. **Outcome Based**: e.g., lower your BMI to target level

   Most agree vaccine surcharge fits here.

3. BOTH ACTIVITY ONLY AND OUTCOME BASED WELLNESS PROGRAMS HAVE TO MEET 5 RULES:

   a. **Frequency of award**: have to be able to earn at least once/year
   
   b. **Size of award**: generally can’t exceed 30% of cost of single coverage full premium
   
   c. **Reasonable design**: can’t be overly burdensome, subterfuge for discrimination
   
   d. **Reasonable Alternative Standard**: have to waive the surcharge if employee completes alternative.
      - Not many examples of what alternative to vaccine surcharge would be.
      - If activity only, only have to offer alternative if participant verifies that standard is unreasonably difficult due to medical condition.
   
   e. **Notice of Availability**: disclosure requirements

**DON’T FORGET!** Title VII still requires reasonable accommodation for sincerely held religious belief.

- • Not many examples of what alternative to vaccine surcharge would be.
- • If activity only, only have to offer alternative if participant verifies that standard is unreasonably difficult due to medical condition.

Holland & Hart