



Update on OSHA's New Vaccination/Testing Rule

On 11/17, OSHA announced that it was suspending implementation and enforcement of its new Vaccination/Testing Rule pending the resolution of the current court case against the Rule.

While there isn't anything that OSHA would enforce now (the Rule's compliance dates aren't until 12/5 and 1/4), it does seem OSHA understands that if the Rule is upheld it will need to give clubs more time to comply. As such, if the Rule passes court muster we could see some extensions to the established deadlines, which would be great.

As of today, all cases against the Rule have been consolidated into one and that case will be heard by the 6th Circuit Court of Appeals. I would expect an answer on the Rule's validity by the end of the month. Unfortunately, I don't have a guess as to how the case will turn out....

The 6th Circuit is a relatively conservative court, but it will depend on which three judges are appointed to hear the matter. Whatever the result, the case will be appealed to the Supreme Court. Once there, it will be in the hands of Justice Alito and Chief Justice Roberts - as those are the two who will be the ones to watch for the deciding votes.

If the Court approves the Rule, I would expect some adjustments to the compliance dates (e.g., OSHA could simply start the clock running again once the case is done – leaving 18 days and 48 days to comply). If the Court strikes down the Rule, then this is no longer an issue.

Nothing prohibits clubs from moving forward with at least preparing the Rule's Notice for your employees (leaving the compliance dates blank for now); however, if you want to wait you certainly may. In any event, you and your Board should at least begin discussing which route you will take if the Rule is upheld – a Vaccination Requirement OR a Testing Requirement.

Again, I would expect the court decision to come by the end of the month and then the Supreme Court to act quickly thereafter. Let me know if you or your Board members have any questions or if you need assistance creating the Notice.