

# OSHA's Vaccine/Testing Rule



# Private Club Consultants

- PCC was created to provide in-depth legal/operational answers for America's top clubs
- Our mission is to help clubs:
  - Implement new legislative and regulatory requirements;
  - Resolve legal issues;
  - Modernize your governance documents; and
  - Protect your private and tax-exempt status
- We are “Your Trusted Source for Answers”



# OSHA's Rule & Your Employees

- Clubs w/ 100 or more employees must create a vax mandate OR a testing mandate
  - “Establish, implement and enforce” a written policy by 12/5/21
  - “100 or more” – at any time on or after 11/5/21
  - “Employees” – Full-time and part-time workers, including seasonal workers
- If it's a vaccination mandate, full vax of employees by no later than 1/4/22
  - Employee could get the 1st dose of Moderna by 12/7, 1st does of Pfizer by 12/14, or J&J by 1/4
  - Club is to provide 4 hrs. PTO to employees who get shots (even if not vax mandate)
  - Employee gets paid sick leave if he needs to recover from the shot (even if not vax mandate)
    - He takes his PTO/sick leave, but club provides up to 2 days if he has none
  - Exceptions are for those with medical issues, disabilities or sincerely held religious beliefs
    - Club decides whether to provide the accommodation
  - No exception for those who have had the virus



# OSHA's Rule & Your Employees

- If it's a testing mandate, testing begins 1/4/22
  - Employee must test every 7 days and present results to club
    - If results aren't provided, the worker is to be removed from club until he does so
  - Worker pays for tests – unless otherwise required by law
  - Any FDA approved test (screening or diagnostic) is okay – can't be a self-administer and self-read test
  - Keep records of results confidential (don't put info. in personnel file)
- Club must determine vax status of each employee and maintain a roster by 12/5/21
  - Have one staffer do this
  - Keep copy of vax card/record confidential (don't put info. in personnel file)
- Unvaxxed must wear face covering/mask indoors beginning 12/5/21
  - Face covering – 2 or more layers with no slits, holes or valves
  - Face mask – FDA medical procedure masks



# OSHA's Rule & Your Employees

- Employees must notify club if they are positive beginning 12/5/21
  - They must stay away until a negative lab (NAAT) test or meeting CDC requirements or Dr. approval
  - Club does not have to provide PTO/sick leave – employees can use their own
- By 12/5/21, club must provide employees – in appropriate “language & literacy level”
  - Which policy the club has chosen and the procedures for complying with that policy
  - The other requirements of this rule (vax status disclosure, PTO for vax, mask requirement, etc.)
  - Vaccine info. – [www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html](http://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html)
  - That they are protected against retaliation and discrimination, and
  - That there are potential penalties for knowingly providing false information to their employer
- On 12/5/21, club reports deaths/hospitalizations and availability of records
- Rule is valid for 6 months – until 5/5/22 – b/c it's an “Emergency Rule”



# OSHA's Rule & Enforcement

- Compliance with the Rule
  - OSHA – \$13,653 per violation (\$50K/violation in BBB)
  - Club policies – you should follow employee handbook if a worker fails to comply
    - Provide counseling and education, then disciplinary measures, then termination
- 27 State AGs have sued and one Cir. Ct. will be selected to hear case
  - 5th Circuit stayed the Rule on 11/12; we'll see which Circuit hears the full case 11/16
    - Must prove “grave danger” of harm vs. “significant risk” of harm in the workplace
      - Is this a workplace issue or an issue coming from outside the workplace?
- 21 States have their own separate OSHA
  - AK, AZ, CA, HI, IA, IN, KY, MD, MI, MN, NC, NM, NV, OR, SC, TN, UT, VA, VT, WA, & WY
  - They must adopt the rule or create one that is “at least as effective”
  - 15 days to adopt or create and then 15 days to make it effective
  - If the rule isn't “at least as effective,” OSHA can sue – which could take years to resolve



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