

# OSHA MAY POSTPONE ENFORCEMENT OF ITS CONTROVERSIAL POST-ACCIDENT DRUG TESTING RULE FOR A SECOND TIME

## Labor & Employment Law Update

on October 17, 2016

As we previously reported, OSHA postponed enforcement of its controversial post-accident drug testing rule from August 10, 2016 to November 1, 2016. Now, with the November 1, 2016 deadline approaching, OSHA may extend its stay on enforcing the post-drug testing rule until December 1, 2016.

OSHA initially delayed enforcement of the rule until November 1, 2016 because a lawsuit was filed in July 2016 by numerous parties seeking injunctive relief to prevent enforcement of the rule. OSHA agreed to postpone enforcement of the rule to allow the parties to brief the legal issues presented in the lawsuit. The legal briefing was completed in September 2016. While the Judge was reviewing the case to determine if OSHA should be enjoined from enforcing its rule, OSHA claimed that the plaintiffs were only seeking injunctive relief on behalf of the parties to the lawsuit and not on a national basis.

On October 14, 2016, the Judge determined that the parties should further brief the issue as to whether the injunction sought was only on behalf of the parties to the lawsuit or if it would apply nationwide. The Judge will only agree to review the issue further if OSHA will agree to postpone enforcement until December 1, 2016. OSHA must decide by October 18, 2016 if it will agree to delay enforcement. It is likely OSHA will agree to delay enforcement. However, it is unclear whether the court will enter an injunction to prevent enforcement of the rule, and if an injunction is entered whether it will apply nationwide or only to the parties that filed the lawsuit.

Unfortunately, it is doubtful employers will receive clarity on this issue until close to the deadline when enforcement is to begin – no matter if that deadline is November 1, 2016 or December 1, 2016. As such, employers should continue with preparations to comply with OSHA's new rule. For more in depth coverage, join us for a webinar on this topic on October 19, 2016 from 10:30 a.m. – 12:00 p.m. Or click [here](#) to register for an in-person seminar in Effingham, Illinois on October 20, 2016.