

UPDATE: OSHA DELAYS ENFORCEMENT OF ITS CONTROVERSIAL POST-ACCIDENT DRUG TESTING RULE UNTIL DECEMBER 1, 2016

Labor & Employment Law Update

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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 has extended 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 requested that OSHA delay enforcement of the rule until December 1, 2016 to allow time for a decision on the pending lawsuit. Today, OSHA informed the court that it has agreed to a further delay and it has advised all regions of the decision to delay enforcement until December 1, 2016. The court intends to make a determination on the request for an injunction prior to the December 1, 2016 deadline. If an injunction is entered, the court will also decide if it prohibits enforcement nationwide or only with respect to the parties.

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 for an in-person seminar in Effingham, Illinois on October 20, 2016.