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VACCINE MANDATES IMPACTING THE SPORTS WORLD: A 5-STEP PLAYBOOK FOR TEAMS AND LEAGUES

Insights

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To date, no major professional sports leagues have mandated players be vaccinated against COVID-19, but many teams have required coaches and other team personnel to do so. Players' unions have generally been resistant to vaccine mandates, which has somewhat forced the hands of various professional leagues. Despite the absence of league-wide mandates, however, changing local and state regulations have forced some players to sit out, and federal regulations will soon force most professional teams and sports leagues to either implement vaccine mandates or develop a testing regimen, among other requirements. What does your team or league need to know about the impending rules and how else have vaccines impacted the playing field? Below you will find a five-step playbook for navigating this area.

Vaccine Issues Cause Ripples Across Sporting Landscape

Even without the federal mandate, professional leagues have been impacted by vaccine mandates. The most notable athlete to refuse to comply with local vaccine requirements is Brooklyn Nets' All-Star point guard Kyrie Irving. Irving has been unable to practice or play with the Nets because he is not vaccinated, and New York City regulations require those entering indoor spaces – like the Nets' arena – to have at least one dose of the COVID-19 vaccine. Irving is reportedly missing out on millions of dollars for the missed games and practices.

While his situation remains unresolved, Andrew Wiggins of the Golden State Warriors faced a similar dilemma but has

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since agreed to get vaccinated. He originally requested a religious exemption from San Francisco's vaccine mandate but the [NBA denied the request](#). Wiggins reportedly received the vaccine after his request for an exemption was denied, and he has been able to play with the Warriors this season.

Perhaps the most notable vaccine news occurred last week when Green Bay Packers quarterback [Aaron Rodgers](#) faced harsh criticism after it was revealed that he is not vaccinated against COVID-19 after he previously told reports that he had been "immunized." In light of this revelation, many have highlighted Rodgers' apparent failure to follow the NFL's protocols for unvaccinated players, including wearing a face covering while indoors.

And perhaps the most troubling report from the sports world arose when the NHL recently [suspended](#) San Jose Sharks forward Evander Kane for 21 games without pay for allegedly submitting a fake COVID-19 vaccination card in response to the league's COVID-19 policy. The NHL currently does not have a vaccine mandate for players, but vaccinated players have fewer restrictions than unvaccinated players, including the ability to play games in Canada without first quarantining.

The Effects of OSHA's Vaccine ETS: a 5-Step Playbook

[The Emergency Temporary Standard \(ETS\) recently released by the Occupational Safety and Health Administration](#) will soon require employers with 100 or more employees to mandate the vaccine or test unvaccinated employees on a weekly basis, among other things. And despite the fact that [the ETS is currently blocked by a court order](#), there is a good chance that the rule will ultimately be upheld and OSHA will be given the green light to proceed with enforcement – meaning employers will need to prepare now. The ETS is likely going to force the hand of the major professional sports leagues and professional sports teams to take action in some regard because most leagues and teams have more than 100 employees. Here is a five-step playbook for you to follow in order to ensure you are in compliance with the rules.

1. *Be Aware of Religious and Medical Accommodations*

For franchises and leagues that decide to implement a vaccine mandate, the ETS permits employees to seek an

exemption from the mandate based on sincerely held religious beliefs and certain medical conditions. However, the NBA has already shown that it is unlikely to grant religious exemptions from vaccine mandates. The league did not provide specifics on why Wiggins' request was denied, but it is likely that it determined that there were no reasonable accommodations that would not cause an undue hardship.

Despite this precedent, you should follow [our three-step guide to responding to accommodation requests](#), which includes engaging in an interactive process to determine whether a reasonable accommodation exists. This process will require an individualized review of the employee's job duties to determine whether a reasonable accommodation exists.

2. *Collect Proof as Necessary*

Regardless of whether leagues and teams mandate the vaccine, the ETS requires that covered employers collect proof of employees' vaccination status and to maintain a roster of the vaccination status of each employee. The situation involving Aaron Rodgers demonstrates the importance of collecting and verifying employee's vaccination status, and differentiating between those who have been fully vaccinated and those who believe they have been "immunized."

3. *Be Careful of Fraudulent Vaccine Certifications*

Teams and leagues should take note of the situation involving Evander Kane and be aware of the possibility of receiving a fraudulent vaccine card. We have developed [a five-step process to handle the potential concern of fake vaccine cards](#), that includes identifying factors that reasonably indicate the need for further inquiry. These factors may include things like the absence of information called for on the now-familiar CDC Vaccination Record card, such as the manufacturer, lot number, date and identification of the vaccine provider. OSHA's ETS provides that employees who knowingly provide a fraudulent vaccine card could be subject to criminal penalties, and employers who knowingly accept a fraudulent vaccine card could also be subject to criminal penalties.

4. *Be Aware of the Limited Nature of the “Outdoor” Exclusion*

The ETS exempts employees who exclusively work outdoors. However, for this exception to apply, employees must have no work time indoors. Therefore, players who simply practice and play outside are likely not exempt if they spend any time inside the team’s facility.

5. *Consider the Testing Option – But Recognize the Hurdles*

Franchises and leagues can opt-out of the vaccine mandate by requiring that all unvaccinated employees report a COVID-19 test result weekly and ensuring that all unvaccinated employees wear a face covering when indoors. Therefore, had the ETS been in place, Aaron Rodgers would have been in violation of both the NFL protocols and OSHA’s ETS for failing to wear a face covering when indoors.

Most professional leagues currently require that unvaccinated players test for COVID-19 regularly. Therefore, many leagues will likely opt to continue these procedures in lieu of mandating the vaccine. However, [you should be aware of the various hurdles that exist if you decide to take this route](#), including ensuring that non-player employees are also tested weekly.

Conclusion

In preparation for OSHA’s ETS becoming effective on January 4, 2022, leagues and franchises should start formulating written policies for disclosing vaccination status and protocols for weekly COVID-19 testing. You should also ensure that you have the necessary procedures in place to consider any request for an accommodation that you receive.

We will monitor these developments and provide updates as events warrant. Make sure you are subscribed to [Fisher Phillips’ Insight system](#) to get the most up-to-date information. If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our [Vaccine Resource Center for Employers](#) or contact your Fisher Phillips attorney, the author of this Insight, or any attorney on our [FP Vaccine Subcommittee](#) or [Sports Law Practice Group](#).

