



## INSIGHTS

### Tough Yardage

September 27, 2021

After two years of financial, social and cultural COVID-19 losses still impossible to fully calculate, American sports is now pulling its audiences into the fall and a mission-critical 2021 football season. It all resembles a running back dragging tacklers along, trying to get to a clear field.

This isn't going to be easy yardage. COVID-19 has joined a new, malevolent fraternity, Delta Maybe Lambda, and poses a renewed threat to the industry's efforts to regain the footing (and revenues) lost over the last 18 months. The miracle vaccines that emerged in January brought a slowdown to 2020's never-ending spiral of sickness, death, isolation, and postponed or diminished sports. However, COVID-19-related fatalities now again exceed 2,000 per day and are peaking in 23 states, with the daily new case count hovering around 150,000.

These are numbers we hoped never to see again, as a nation turned its lonely eyes to this fall's baseball playoffs – and most importantly to football. Neither college nor professional athletics anticipated this summer's combination of COVID-19 surge and vaccination resistance, or how it has threatened to compromise the urgent planning by athletic departments and professional front offices alike for a successful, resurgent autumn of sold-out stadiums and returning fans.

The sector's efforts during 2020 were urgent and heroic. College and pro sports delivered entertaining if sometimes compromised seasons and championships. As diversion, it was a godsend.

As business, though, it was a disaster. No segment of the U.S. sports culture is prepared to repeat the last catastrophic year or the triage that it took to address it. For that matter, no sports fan wants to hear about bubbles, or shortened seasons, or cancelled games and events, or

## RELATED INDUSTRIES

Colleges and Universities

University and Professional Athletics

quarantined stars.

Sports has taken extraordinary steps to protect players, staff, and administrators. College campuses are enforcing safety standards for all of their students this fall, with especially stringent testing for their student athletes given their travel and contact requirements; The Chronicle of Higher Education's tracker now counts more than 1,050 schools imposing some form of protective "vax-or-test" mandates for their students. All of the professional leagues have stressed testing and vaccination, and the number of non-vaccinated athletes continues to diminish.

But the real threat is in the stands, and there it's a different story. Organized U.S. sports at both the professional and collegiate level have opted to return to full schedules and capacity crowds this fall, with minimal regulation regarding vaccination or testing. Millions of largely unmasked, marginally vaccinated, shoulder-to-shoulder fans have already descended upon college and pro stadiums in the first weeks of this football season. It is both thrilling and unsettling to watch.

Division I FBS and FCS football attendance alone should easily surpass 40 million fans this year. Yet as of this writing, only four Power 5 schools have imposed vax-or-test mandates for their fans, and there's no stampede to raise that number. The situation isn't much different over on the pro side; attendance over the season's first three weeks is over 90 percent, estimated at almost 2.5 million fans to date. Only three teams have straightforward vaccine or testing mandates in place. A number of teams require masking for designated indoor areas in stadiums, but that's far from comprehensive attention to fan safety.

To ask much more of college or pro football probably isn't fair. The sport has limited central authority at either level to unilaterally address, much less resolve, the controversy and mixed messaging that still surround vaccination and testing mandates. Collective bargaining at the professional level, differing college and conference mandates, conflicting state and local regulation, and the overlay of politics all weigh heavily on the industry's ability and enthusiasm to address the issue head-on.

That said, the decision to even partially relax last year's overriding mandate of fan safety is a risk, even if the U.S. and its fans – especially the vaccinated ones – are less vulnerable to the scourge of COVID-19 than at this time last year. The consequences of the decision not to require a vaccination or negative test on entry, or not to enforce even indoor masking, will be played out very publicly. America's football stadiums are a powerful, nationally broadcasted symbol as to how well we're doing in defeating the virus – or not. A big-time football game is the definition of a superspreader event, and there are months of them to come.

First returns should be coming out soon. We are almost a month into the new season, entering that critical post-exposure period when the virus metastasizes into full blown COVID-19 for fans who may have been exposed to it. The delta variant continues to attack the young and the unvaccinated relentlessly, with more than one in four of current reported cases involving a patient 18 years or younger. Autumn has arrived, bringing with it the cooler temperatures that appear to drive the virus. And winter is coming. We have underestimated COVID-19's vicious resiliency before.

From a risk management standpoint, the sector will continue to rely in

part on the long-standing (if qualified) assumption that when you buy a ticket to the game, the disclaimer on the back is as important as the admission on the front – you buy the risk when you buy the show. Unlike injuries from foul balls and flying pucks, it is difficult to trace the source of COVID-19 contagion to the unmasked guy sitting next you in the stands singing the fight song. However, like the virus itself, there is always that breakthrough case out there.

It is noteworthy that some colleges and pro teams are still resisting the trend toward relaxed fan safety mandates. Louisiana State University, the only SEC program with a vax-or-test requirement, still projects a Tiger Stadium sellout and more than 102,000 fans for its opening home game on October 2 against Auburn. Oregon, another vax-or-test facility, filled Autzen Stadium last Saturday. The pro teams with vaccination requirements have played to 95 percent capacity in their first home games. Maybe enforced fan safety mandates and full houses are compatible after all.

There are signs the current delta variant surge may be waning. That's something everyone is rooting for. Still, this is going to be tough yardage, on a field that looked a lot more open last May than it does this September. If the present COVID-19 surge turns brutal this fall, if another strain appears, if, if – the effect it will have on sports will be significant. For college football and the athletic programs football supports, it will be devastating.

If you're an unprotected fan, though, it's even worse than that. It can take your breath away.

*With more than 700 attorneys and other legal professionals, Barnes & Thornburg is one of the largest law firms in the country. The firm serves clients worldwide from offices in Atlanta, Boston, California, Chicago, Delaware, Indiana, Michigan, Minneapolis, New York, Ohio, Raleigh, Salt Lake City, Texas and Washington, D.C. For more information, visit us online at [www.btlaw.com](http://www.btlaw.com) or on Twitter @BTLawNews.*