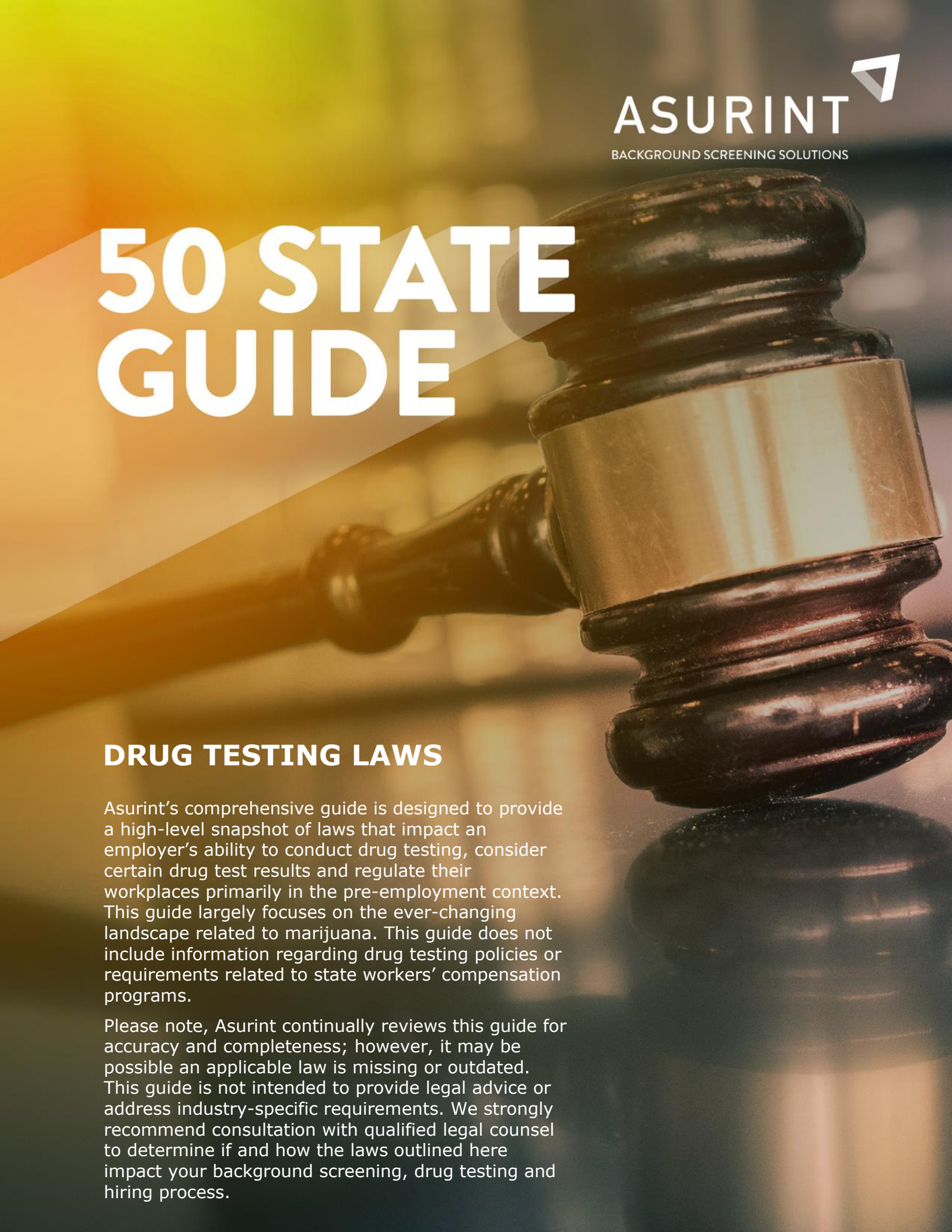
ASURINT

BACKGROUND SCREENING SOLUTIONS

50 STATE GUIDE



DRUG TESTING LAWS

Asurint's comprehensive guide is designed to provide a high-level snapshot of laws that impact an employer's ability to conduct drug testing, consider certain drug test results and regulate their workplaces primarily in the pre-employment context. This guide largely focuses on the ever-changing landscape related to marijuana. This guide does not include information regarding drug testing policies or requirements related to state workers' compensation programs.

Please note, Asurint continually reviews this guide for accuracy and completeness; however, it may be possible an applicable law is missing or outdated. This guide is not intended to provide legal advice or address industry-specific requirements. We strongly recommend consultation with qualified legal counsel to determine if and how the laws outlined here impact your background screening, drug testing and hiring process.

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ALABAMA

ALABAMA

Alabama does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

With respect to medical marijuana, Alabama's Darren Wesley "Ato" Hall Compassion Act (the "Act") specifies that the Act does not (i) require any employer to permit, accommodate, or allow the use of medical cannabis, or to modify any job or working conditions of any employee who engages in the use of medical cannabis or for any reason seeks to engage in the use of medical cannabis; (ii) prohibit any employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against an individual with respect to hiring, discharging, tenure, terms, conditions, or privileges of employment as a result of that individual's use of medical cannabis, regardless of the individual's impairment or lack of impairment resulting from the use of medical cannabis; (iii) prohibit or limit the ability of any employer from establishing or enforcing a drug testing policy, including a policy that prohibits the use of medical cannabis in the workplace; and (iv) prohibit or limit any employer from adopting an employment policy requiring its employees to notify the employer if an employee possesses a medical cannabis card. The Act also does not permit, authorize, or establish any individual's right to commence or undertake any legal action against an employer for refusing to hire, discharging, disciplining, or taking an adverse employment action against an individual with respect to hiring, discharging, tenure, terms, conditions, or privileges of employment due to the individual's use of medical cannabis. Ala. Code §20-2A-6.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

ALASKA

Alaska has a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

In Alaska, an employer may only carry out the testing or retesting for the presence or evidence of use of drugs or alcohol after adopting a written policy for the testing/retesting and informing employees of the policy. The employer may inform employees by distributing a copy of the policy to each employee subject to testing or making the policy available to employees in the same manner as the employer informs its employees of other personnel practices, including inclusion in a personnel handbook or manual or posting in a place accessible to employees. The employer shall inform prospective employees that they must undergo drug testing. Alaska's law contains specific items that must be included in the written drug and alcohol testing policy.

An employer may require the collection and testing of a sample of an employee's or prospective employee's urine or breath for any job-related purpose consistent with business necessity and the terms of the employer's policy, including: (i) investigation of possible individual employee impairment; (ii) investigation of accidents in the workplace (an employee may be required to undergo drug testing or alcohol impairment testing for an accident if the test is taken as soon as practicable after an accident and the test is administered to employees who the employer reasonably believes may have contributed to the accident); (iii) maintenance of safety for employees, customers, clients, or the public at large; (iv) maintenance of productivity, the quality of products or services, or security of property or information; (v) reasonable suspicion that an employee may be affected by the use of drugs or alcohol and that the use may adversely affect the job performance or the work environment. In addition, an employer may require employees or groups of employees to undergo drug testing on a random or chance basis. Alaska Stat §23.10.620. Effective October 28, 2024: Alaska's law is amended to allow employers to conduct oral fluid testing.

Employers should review Alaska's law for additional information regarding collection of samples, testing procedures and confidentiality of results.

Statewide Medical Marijuana Law

Alaska's medical marijuana statute does not require any accommodation of any medical use of marijuana in any place of employment. Alaska Stat §17.37.040.

Statewide Recreational Marijuana Law

Alaska's recreational marijuana statute does not require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace or affect the ability of employers to have policies restricting the use of marijuana by employees. An employer may still prohibit or regulate the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in the employer's property. Alaska Stat §17.38.220.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

ARIZONA

Arizona has a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

In Arizona, testing or retesting for the presence of drugs or alcohol by an employer must be carried out within the terms of a written policy that has been distributed to every employee subject to testing or that has been made available to employees in the same manner as the employer informs its employees of other personnel practices, such as inclusion in a personnel handbook or posting in a place accessible to employees. The employer is also to inform prospective employees that they must undergo drug testing. Arizona's law outlines specific items that must be included within the employer's policy.

Within the terms of the policy, an employer may require the collection and testing of samples for any job-related purposes consistent with business necessity including: (i) investigation of possible individual employee impairment; (ii) investigation of accidents in the workplace (employees may be required to undergo drug testing or alcohol impairment testing for accidents if the test is taken as soon as practicable after an accident and the test is administered to employees who the employer reasonably believes may have contributed to the accident); (iii) maintenance of safety for employees, customers, clients or the public at large; (iv) maintenance of productivity, quality of products or services or security of property or information; (v) reasonable suspicion that an employee may be affected by the use of drugs or alcohol and that the use may adversely affect the job performance or the work environment. Employees or groups of employees may also be required to undergo drug testing on a random or chance basis. If an employer institutes a policy of drug testing or alcohol impairment testing, all compensated employees must be uniformly included in the testing policy. Ariz. Rev. Stat. 23-493.04.

Employers should review Arizona's law for additional information regarding collection of samples, testing procedures and confidentiality of results.

Statewide Medical Marijuana Law

In Arizona, unless a failure to do so would cause an employer to lose a monetary or licensing related benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person based upon either: status as a cardholder, or a registered qualifying patient's positive drug test for marijuana, unless they used, possessed, or were impaired by marijuana at the place of employment or during the hours of employment. Ariz. Rev. Stat. §36-2813.

An employer is not required to allow the ingestion of marijuana in the workplace or allow an employee to work while under the influence of marijuana, except that a registered qualifying patient is not considered to be under the influence of marijuana solely because of the presence of marijuana that appear in insufficient concentration to cause impairment. However, an employer is not prohibited from disciplining an employee for ingesting marijuana in the workplace or working while under the influence of marijuana. Ariz. Rev. Stat. §36-2814.

Employers are cautioned to consult with qualified legal counsel as it pertains to Arizona's Medical Marijuana Act, including items such as evidence of impairment or other justification for a medical marijuana user's termination, as there has been litigation involving this particular law.

Statewide Recreational Marijuana Law

Arizona's Responsible Adult Use of Marijuana statute does not restrict the rights of employers to maintain a drug-and-alcohol-free workplace or affect the ability of employers to have workplace policies restricting the use of marijuana by employees or prospective employees. This statute also does not require an employer to allow or accommodate the use, consumption, possession, transfer, display, transportation, sale or cultivation of marijuana in a place of employment. Ariz. Rev. Stat. §36-2851.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

ARKANSAS

ARKANSAS

Arkansas does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

While Arkansas does not have a statewide law regulating workplace-related drug and/or alcohol testing in general, it is unlawful to require any employee or applicant for employment, as a condition of employment or continued employment, to submit to or take a physical, medical examination, or drug test unless the physical, medical examination, or drug test is provided at no cost to the employee or applicant for employment and unless a true and correct copy, either original or duplicate original, of the examiner's report of the physical, medical examination, or drug test is furnished free of charge to the applicant or employee upon a written request of the applicant or employee. However, if an employee tests positive for an illegal drug, then the employer and employee may agree in writing who will bear the cost of future drug tests required as a condition of continued employment. Ark. Code Ann. §11-3-203.

Statewide Medical Marijuana Law

The Arkansas Medical Marijuana Amendment of 2016 specifies that nothing in the Amendment requires an employer to accommodate the ingestion of marijuana in a workplace or an employee working while under the influence of marijuana. An employer, however, cannot discriminate against an applicant or employee in hiring, termination, or any term or condition of employment, or otherwise penalize an applicant or employee, based upon the applicant's or employee's past or present status as a qualifying patient or designated caregiver.

The Amendment also provides that there is no cause of action against an employer based upon, and an employer is not prohibited from, (i) establishing and implementing a substance abuse or drug-free workplace policy that may include a drug testing program that complies with state or federal law, and taking action with respect to an applicant or employee under the policy; (ii) acting on the employer's good faith belief that a qualifying patient possessed, smoked, ingested, engaged in the use of, or was under the influence of marijuana while on the employer's premises or during work hours (provided that a positive test result for marijuana cannot provide the sole basis for the employer's good faith belief); and (iii) acting to exclude a qualifying patient from being employed in or performing a safety sensitive position based on the employer's good faith belief that the qualifying patient was engaged in the current use of marijuana.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

CALIFORNIA

CALIFORNIA

California does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

While California does not have a statewide law regulating workplace-related drug and/or alcohol testing in general, every private employer regularly employing 25 or more employees must reasonably accommodate any employee who wishes to voluntarily enter and participate in an alcohol/drug rehabilitation program, provided that this reasonable accommodation does not impose an undue hardship on the employer. However, an employer is not prohibited from refusing to hire or discharging an employee, who because of the employee's use of alcohol or drugs, is unable to perform their duties or cannot perform duties in a manner which would not endanger their health/safety or the health/safety of others. Cal. Lab. Code §1025.

Statewide Medical Marijuana Law

California's Compassionate Use Act expressly provides that it does not restrict the rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace, or affect the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees, or prevent employers from complying with state or federal law. Cal. Health & Safety Code §11362.45. In addition, California's medical marijuana law does not require any accommodation of the medicinal use of cannabis on the property or premises of a place of employment or during the hours of employment. Cal. Health & Safety Code §11362.785.

Statewide Recreational Marijuana Law

California's law regulating recreational marijuana does not specifically set forth any employment-related provisions. Employers have the right to maintain a drug-free workplace and are not required to accommodate the use, consumption or possession of marijuana in the workplace.

However, AB 2188, effective January 1, 2024, makes it an unlawful practice for an employer to discriminate against an individual in hiring, termination, or any other term or condition of employment, or otherwise penalizing a person if the discrimination is based upon (i) the individual's use of cannabis off the job and away from the workplace, and (ii) an employer-required drug test that has found the person to have non-psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

Employers may still take adverse employment related actions based on "scientifically valid preemployment drug screening conducted through methods that do not screen for non-

psychoactive cannabis metabolites." AB 2188 is not intended to permit an employee to possess, use or be impaired by marijuana on the job and it does not impact an employer's ability to maintain drug- and alcohol-free workplaces. The law also does not preempt any state or federal laws that require drug testing for applicants or employees and does not apply to employees working in construction.

According to the Ninth Circuit Court of Appeals, which includes California, time and/or travel expenses related to pre-employment drug tests is not compensable for job applicants as these individuals are not yet employees and thus are not performing work for the employer when taking the drug test.

Local Considerations

San Francisco

Employers may not demand, require, or request employees to submit to, to take or to undergo any blood, urine, or encephalographic test in the body as a condition of continued employment. However, employers are not prohibited from requiring a specific employee to submit to blood or urine testing if: (i) the employer has reasonable grounds to believe that an employee's faculties are impaired on the job; (ii) the employee is in a position where such impairment presents a clear and present danger to the physical safety of the employee, another employee or to a member of the public; and (iii) the employer provides the employee, at the employer's expense, the opportunity to have the sample tested or evaluated by a state licensed independent laboratory/testing facility and provides the employee with a reasonable opportunity to rebut or explain the result. Employers are also prohibited from random or company-wide blood, urine or encephalographic testing. §3300A.5.

Employers can still prohibit the use of intoxicating substances during work hours, and discipline employees for being under the influence of intoxicating substances during work hours. §3300A.7.

San Francisco's law is not intended to regulate or affect the rights or authority of an employer to do those things that are required, directed, or expressly authorized by federal or state law or administrative regulation or by a collective bargaining agreement between an employer and an employer labor organization.

COLORADO

COLORADO

Colorado does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

In Colorado, an employer is not required to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or cultivating of regulated marijuana in the workplace and nothing affects the ability of employers to have policies restricting the use of marijuana by employees. In addition, employers are still able to prohibit or regulate the possession, consumption, use, display, transfer, distribution, sale, transportation, or cultivating of marijuana on or in the employer's property. Colo. Rev. Stat. §44-10-104 and Colo. Const. XVIII, Sec. 14.

Colorado employers should review a 2015 Colorado Supreme Court decision which found Colorado's lawful off-duty activity statute does not include marijuana use given marijuana is still illegal under federal law. Therefore, Colorado medical marijuana users are not protected from wrongful discharge via the state's lawful off-duty activity statute. (Coats v. Dish Network, LLC, 350 P.3d 849 (Colo. 2015)).

Statewide Recreational Marijuana Law

An employer is not required to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or cultivating of regulated marijuana in the workplace and nothing affects the ability of employers to have policies restricting the use of marijuana by employees. In addition, employers are still able to prohibit or regulate the possession, consumption, use, display, transfer, distribution, sale, transportation, or cultivating of marijuana on or in the employer's property. Employers are also still allowed to test for marijuana and make employment decisions based on those results. Colo. Rev. Stat. §44-10-104 and Colo. Const. XVIII, Sec. 16. *See also* https://cannabis.colorado.gov/legal-marijuana-use/laws-about-marijuana-use.

In the 2022 elections, Colorado voters passed Proposition 122 which legalizes possession and use of "natural medicine" which includes various psychedelic drugs such as mushrooms. The law does not require employers to permit or accommodate the use, consumption, possession, transfer, display, transportation or growing of natural medicines in the workplace. Psychedelic drugs covered under the law will be legalized by 2024.

Local Considerations

Boulder

From a post-employment drug testing perspective, subject to certain exceptions, employers may not request or require from an employee any test for drugs or alcohol or determine an employee's eligibility for promotion, additional compensation, transfer, disciplinary or other personnel action, or the receipt of any benefit, based on the result of such test, unless certain conditions are met, including, among other things, the employer having a written testing policy, and at the time of requesting or requiring the test the employer has individualized reasonable suspicion (based on specific, objective, clearly expressed facts) to believe that the employee is under the influence of a drug or alcohol on the job, or his or her job performance is currently adversely affected by use of a drug or alcohol, or the employee has agreed to the test as a part of an employee assistance program after a finding or admission of prior drug or alcohol abuse. §12-3-2.

From a pre-employment drug testing perspective, subject to certain exceptions, an employer must not conduct a drug or alcohol test as part of a pre-employment screening except under the following circumstances: (i) the employer includes notice that a drug or alcohol test will be part of the pre-employment screening process or pre-employment physical in the application for employment, or if no application form is required, in all advertisements soliciting applicants for employment, and all applicants for employment are personally informed of the requirement for a drug or alcohol test at the first formal interview; (ii) the drug or alcohol test is required only of Colorado residents who are the single finalist for the position or out-of-state resident finalists for the position who come to Colorado for an interview (if the same test is required of all finalists for that position); and (iii) the drug and alcohol testing requirements set forth in the Boulder municipal code are complied with concerning job applicants as well as employees. §12-3-3.

There are limited exemptions including for testing of an employee operating a commercial vehicle weighing over twenty six thousand pounds and for which a Commercial Driver's License is required, or which transports sixteen or more passengers, including the driver, under the Controlled Substances Testing Provisions set forth in the U.S. Department of Transportation regulations for commercial vehicles. §12-3-4.

Employers are not restricted from prohibiting the use of, possession of or trafficking in, illegal drugs during work hours, or from disciplining an employee for being under the influence of, using, possessing or trafficking in, illegal drugs during work hours or on the employer's premises. Employer's may also prohibit the use of alcohol during work hours and discipline an employee for being under the influence of alcohol during work hours or on the employer's premises. Employers should review Boulder’s law for additional employer rights. §12-3-5.

CONNECTICUT

CONNECTICUT

Connecticut has a statewide law that regulates employment-related drug testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

Employers may not determine an employee's eligibility for promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action solely on the basis of a positive urinalysis drug test result, unless the employer has given the employee a urinalysis drug test utilizing a reliable methodology, and such positive test result was confirmed by a second urinalysis drug test (separate and independent from the first test) utilizing a gas chromatography and mass spectrometry methodology (or a methodology which has been determined by the Commissioner of Public Health to be as reliable or more reliable than the gas chromatography and mass spectrometry methodology). Conn. Gen. Stat. §31-51u.

Employers may not require a prospective employee to submit to a urinalysis drug test as part of the application procedure for employment, unless (i) the prospective employee is informed in writing at the time of application of the employer's intent to conduct a drug test; (ii) such test is conducted in accordance with the requirements of the law; and (iii) the prospective employee is given a copy of any positive urinalysis drug test result. Conn. Gen. Stat. §31-51v.

In addition, no employer may require an employee to submit to a urinalysis drug test unless the employer has reasonable suspicion that the employee is under the influence of drugs or alcohol which adversely affects or could adversely affect the employee's job performance. However, an employer may require an employee to submit to a urinalysis drug test on a random basis if: (i) such test is authorized under federal law; (ii) the employee serves in an occupation which has been designated as a high-risk or safety-sensitive occupation pursuant to regulations adopted by the Labor Commissioner, or is employed to operate a school bus, or a student transportation vehicle; or (iii) the urinalysis is conducted as part of an employee assistance program sponsored or authorized by the employer in which the employee voluntarily participates. Conn. Gen. Stat. §31-51x.

Employers are allowed to prohibit intoxicating substances during work hours and discipline employee(s) for being under the influence of intoxicating substances during work hours.

Statewide Medical Marijuana Law

Employers may not refuse to hire a person or discharge, penalize or threaten an employee solely on the basis of such person's or employee's status as a "qualifying patient" or "primary caregiver." Employers are not restricted from prohibiting the use of intoxicating substances during work hours, and employers may still discipline an employee for being under the influence of intoxicating substances during work hours. Conn. Gen. Stat. §21a-408p.

Statewide Recreational Marijuana Law

Employers are not required to make accommodations for an employee or be required to allow an employee to: (i) perform their duties while under the influence of cannabis or (ii) possess, use or otherwise consumer cannabis while performing such duties or on the premises of the employer (except possession by a qualifying medical marijuana patient). Employers may implement a policy prohibiting the possession, use or other consumption of cannabis by an employee (with limited exceptions) and as long as the policy complies with the guidelines established by the law such as ensuring the policy is in writing and available to the employee. However, employers may not discharge or take any other adverse action against employees because the employee uses cannabis products outside of the workplace unless such action is in alignment with its workplace policy. Further, employers may not discharge or take any other adverse action against employees or prospective employees because the individual used cannabis products outside of the workplace before the prospective employee became an employee unless failing to do so would put the employer in violation of a federal contract or cause it to lose federal funding.

Employers may also still take appropriate action based on reasonable suspicion or if an employee manifests specific, articulable symptoms of drug impairment while working at the workplace or on call that decreases or lessens performance.

A drug test of a prospective or existing employee, other than a prospective or existing exempted employee, that yields a positive result solely for 11-nor-9-carboxy-delta4486 9-tetrahydrocannabinol, shall not form the sole basis for refusal to employ or to continue to employ or otherwise penalize such prospective or existing employee, unless (1) failing to do so would put the employer in violation of a federal contract or cause it to lose federal funding, (2) the employer reasonably suspects an employee's usage of cannabis while engaged in the performance of the employee's work responsibilities, (3) the employee manifests specific, articulable symptoms of drug impairment while working that decrease or lessens performance.

There are numerous exemptions under the law including employees subject to federal Department of Transportation regulations. Conn. Gen. Stat. §21a-422o-s.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

DELAWARE

DELAWARE

Delaware does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

The Delaware Medical Marijuana Act provides that, unless a failure to do so would cause the employer to lose a monetary or licensing related benefit under federal law, an employer may not discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon a person's status as a cardholder, or a registered qualifying patient's positive drug test for marijuana (unless the patient used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment). Del. Code Ann. Tit. 16, §4905A.

Employers are not required to allow the ingestion of marijuana in the workplace or to allow any employee to work while under the influence of marijuana, except that a registered qualifying patient is not considered to be under the influence of marijuana solely because of the presence of metabolites/components of marijuana. Furthermore, employers are not prohibited from disciplining an employee for ingesting marijuana in the workplace or working while under the influence of marijuana. Del. Code Ann. Tit. 16, §4907A.

Statewide Recreational Marijuana Law

Delaware legalized recreational marijuana (effective immediately) – House Bill 1 and House Bill 2. Delaware's Governor did not sign the legislation but also did not veto so the bills became law.

Nothing in the law is "intended to impact or impose any requirement or restriction on employers with respect to terms and conditions of employment including but not limited to accommodation, policies or discipline." Employers are also able to prohibit marijuana possession, consumption, use, display, transfer, sale, etc. of marijuana on their property.

This law does not change the existing medical marijuana law.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

DISTRICT OF COLUMBIA

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DISTRICT OF COLUMBIA

The District of Columbia has a law that regulates pre-employment marijuana testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

Employers may only drug test a prospective employee for marijuana use after a conditional offer of employment has been extended (unless otherwise required by law). D.C.'s restriction on pre-employment marijuana testing does not: (i) affect employee compliance with employer workplace drug policies; (ii) require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace or at any time during employment; (iii) interfere with federal employment contracts; or (iv) prevent the employer from denying a position based on a positive marijuana test. D.C. Code §32-931.

Statewide Medical Marijuana Law

Under the recently passed Cannabis Employment Protections Amendment Act of 2022, employers cannot refuse to hire, or otherwise impact an individual's employment based on (i) an individual's use of cannabis; (ii) an individual's status as a medical cannabis program patient; and (iii) the presence of cannabinoid metabolites in the individual's bodily fluids in a required drug test without additional factors (such as manifesting specific articulable symptoms either while working or during the hours of work that substantially decrease or lessen the employee's performance or interfere with the employer's obligation to provide a safe and health workplace).

However, employers are not required to permit or accommodate the use, consumption, or possession of marijuana at the workplace or during working hours (unless otherwise legally required to). Employers may also adopt a reasonable drug free workplace policy requiring post-accident or reasonable suspicion drug testing. There are also other exceptions to the law's requirements including for employees in safety sensitive positions.

Employers are required to provide notice of the employee's rights under the law, including whether the position has been designated as safety sensitive and any drug testing protocols. The Office of Human Rights will be publishing a template notice.

Employers must treat the use of medical marijuana in relation to a disability the same as it would any other controlled substance prescribed by or taken under the supervision of a licensed health care professional. D.C. ACT 24-483.

Statewide Recreational Marijuana Law

District of Columbia's law regulating recreational marijuana does not require employers to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace or to affect the ability of any employer to establish and enforce policies restricting the use of marijuana by employees. D.C. Code §48–904.01.

The District of Columbia also decriminalized the possession or transfer of one ounce or less of marijuana making such an act a civil offense punishable by minor civil fines. D.C. Code §48–1201.

Local Considerations

There are no known additional laws regulating medicinal or recreational use of marijuana applicable to private employers.

FLORIDA

FLORIDA

Florida does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

Employers are not required to accommodate the use of medical marijuana in the workplace or allow an employee to work under the influence of marijuana. Employers are also not limited in their ability to establish, continue, or enforce a drug-free workplace program or policy. Further, the law does not create a cause of action against an employer for wrongful discharge or discrimination. Fla. Stat. §381.986 and Florida Constitution Art. X, Sec. 29.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

GEORGIA

GEORGIA

Georgia does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

An employer is not required to permit or accommodate the use, consumption, possession, transfer, display, transportation, purchase, sale, or growing of marijuana in any form. Employers still have the ability to implement a written zero tolerance policy prohibiting the on-duty, and off-duty, use of marijuana, or prohibiting any employee from having a detectable amount of marijuana in such employee's system while at work. O.C.G.A. §16-12-191.

Statewide Recreational Marijuana Law

None.

Local Considerations

Atlanta

In Atlanta, Executive Order 2021-08 suspends pre-employment drug screenings for prospective public employees in non-safety positions.

HAWAII

HAWAII

Hawaii has a statewide law that regulates employment-related substance abuse testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

Hawaii has limited laws regulating drug testing of employees. However, prior to the collection of any sample for substance abuse testing, the individual to be tested must receive a written statement of the specific substances to be tested for and a statement that over-the-counter medications or prescribed drugs may result in a positive test result. Haw. Rev. Stat. §329B-5. Every employer using a substance abuse on-site screening test must administer the test according to the manufacturer instructions and the package insert that accompanies the substance abuse on-site screening test. However, any indication of the presence of drugs, alcohol, or the metabolites of drugs by the substance abuse on-site screening test cannot be used to deny or deprive a person of employment or any benefit, or result in any adverse action against the employee or prospective employee unless the substance abuse test is conducted in accordance with §329B-5 and subsection (3) of §329B-5.5.

Upon the indication of the presence of drugs, alcohol, or the metabolites of drugs by the substance abuse on-site screening test, the employer must have the employee or prospective employee report within four hours to a laboratory licensed by the department of health and undergo a substance abuse test. The employer must bear the cost of the laboratory referral. An employee or prospective employee who refuses or fails to report for the substance abuse test may be denied or deprived of employment or any benefit, or have adverse action taken against the employee or prospective employee; provided that the employer has provided to the employee or prospective employee written notice (with certain required disclosures). Haw. Rev. Stat. §329B-5.5.

Furthermore, it is unlawful for an employer to suspend, discharge, or discriminate against any of the employer's employees because an employee tested positive for the presence of drugs, alcohol, or the metabolites of drugs in a substance abuse on-site screening test conducted in accordance with the above provision; provided that this does not apply to an employee who fails or refuses to report to a laboratory for a substance abuse test pursuant to the above provision. Haw. Rev. Stat. §378-32. There are exemptions under the law including for parties covered by a drug testing regulation adopted by the Department of Transportation or other federal agencies.

Statewide Medical Marijuana Law

Hawaii protects the rights of employers to maintain zero-tolerance drug-free workplace policies, as the authorization for the medical use of cannabis does not apply to the medical use of cannabis in the workplace of one’s employment. Haw. Rev. Stat. §329-122.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

IDAHO

IDAHO

Idaho has a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

In Idaho, it is lawful for a private employer to test employees or prospective employees for the presence of drugs or alcohol as a condition of hiring or continued employment (provided the testing requirements and procedures are in compliance with 42 U.S.C. section 12101). An employer is not prohibited from using the results of a drug or alcohol test conducted by a third party as the basis for determining whether an employee has committed misconduct. Idaho Code §72-1702.

An employer must have a written policy on drug and/or alcohol testing that includes, among other things, a statement that violation of the policy may result in termination due to misconduct. Testing for the presence of drugs or alcohol by an employer must be carried out within the terms of a written policy that has been communicated to affected employees, and is available for review by prospective employees. The employer must also list the types of tests that an employee may be subject to in their written policy, which may include baseline, pre-employment, post-accident, random, return to duty, follow up, and reasonable suspicion testing. Idaho Code §72-1705.

In addition, any employee or prospective employee who tests positive for drugs or alcohol must be given written notice of that test result, including the type of substance involved, by the employer. The employee then must be given an opportunity to discuss and explain the positive test result with a medical review officer or other qualified person. Any employee or prospective employee who has a positive test result may request that the same sample be retested by a mutually agreed upon laboratory. A request for retest must be done within seven (7) working days from the date of the first confirmed positive test notification and may be paid for by the employee or prospective employee requesting the test. If the retest results in a negative test outcome, the employer must reimburse the cost of the retest, compensate the employee for their time if suspended without pay, or if terminated solely because of the positive test, the employee shall be reinstated with back pay. Idaho Code §72-1706.

An employee or prospective employee whose drug or alcohol test results are verified or confirmed as positive in accordance with the provisions of this act shall not, by virtue of those results alone, be defined as a person with a "disability". Idaho Code §72-1713.

Statewide Medical Marijuana Law

None.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

ILLINOIS

Illinois does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

The Illinois Compassionate Use of Medical Cannabis Pilot Program Act (the "Act") prohibits employers from penalizing a person solely for his or her status as a "registered qualifying patient" or a "registered designated caregiver" unless failing to do so would put the employer in violation of federal law or unless failing to do so would cause the employer to lose a monetary or licensing-related benefit under federal law. 410 ILCS 130/40. Employers may still implement reasonable regulations concerning the consumption, storage, or timekeeping requirements for qualifying patients related to the use of medical marijuana. Employers may also still enforce policies concerning drug testing, zero-tolerance, or a drug free workplace policy, provided that the policy is applied in a nondiscriminatory manner. An employer also is not prohibited from disciplining a registered qualifying patient for violating a workplace drug policy. Further, an employer may discipline an employee for failing a drug test if failing to do so would put the employer in violation of federal law or cause it to lose a federal contract or funding 410 ILCS 130/50.

In addition, an employer may consider a registered qualifying patient to be impaired when he or she manifests specific, articulable symptoms while working that decrease or lessen his or her performance of the duties or tasks of the employee's job position, including, among other things, symptoms of the employee's speech, physical dexterity, agility, coordination, or demeanor. However, if an employer elects to discipline a qualifying patient on the basis that the qualifying patient is impaired by cannabis, it must afford the individual a reasonable opportunity to contest the basis of the determination. The Act does not create a cause of action against an employer for (i) actions based on the employer's good faith belief that a registered qualifying patient used or possessed cannabis while on the employer's premises or during the hours of employment; (ii) actions based on the employer's good faith belief that a registered qualifying patient was impaired while working on the employer's premises during the hours of employment; (iii) injury or loss to a third party if the employer neither knew nor had reason to know that the employee was impaired. 410 ILCS 130/50.

Statewide Recreational Marijuana Law

Under the Illinois Cannabis Regulation and Tax Act, employers may adopt reasonable zero tolerance or drug free workplace policies, or employment policies concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace or while on call provided that the policy is applied in a nondiscriminatory manner. Employers are not required to permit an employee to be under the influence of or use cannabis in the employer's workplace or while performing the employee's job duties or while on call. Employers may also discipline or terminate an employee for violating an employer's employment policies or workplace drug policy. 410 ILCS 705/10-50.

There is no cause of action against an employer for: (i) actions taken pursuant to an employer's reasonable workplace drug policy, including subjecting an employee or applicant to reasonable drug and alcohol testing, reasonable and nondiscriminatory random drug testing, and discipline, termination of employment, or withdrawal of a job offer due to a failure of a drug test; (ii) actions based on an employer's good faith belief that an employee used or possessed cannabis in the employer's workplace or while performing the employee's job duties or while on call in violation of the employer's employment policies; (iii) actions, including discipline or termination of employment, based on the employer's good faith belief that an employee was impaired as a result of the use of cannabis, or under the influence of cannabis, while at the employer's workplace or while performing the employee's job duties or while on call in violation of the employer's workplace drug policy; or (iv) injury, loss, or liability to a third party if the employer neither knew nor had reason to know that the employee was impaired. 410 ILCS 705/10-50(e).

In addition, an employer may consider an employee to be impaired or under the influence of cannabis if the employer has a good faith belief that an employee manifests specific, articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including, among other things, symptoms of the employee's speech, physical dexterity, agility, coordination, or demeanor. However, if an employer elects to discipline an employee on the basis that the employee is under the influence or impaired by cannabis, the employer must afford the employee a reasonable opportunity to contest the basis of the determination. 410 ILCS 705/10-50(d). The law specifically notes that it does not interfere with any federal, state or local restrictions on employment, including, but not limited to, U.S. DOT regulations.

Illinois employers should be mindful that under the Right to Privacy in the Workplace Act, it is unlawful to refuse to hire or to discharge an employee, or otherwise disadvantage an employee with respect to compensation, terms, conditions or privileges of employment because the individual uses, "lawful products off the premises of the employer during nonworking and non-call hours" (except as otherwise provided by law). This includes products that are legal under state law. ILCS 820 55/5(a). However, the Illinois legislature clarified adverse action based on a positive drug test does not open the employer to liability if such action is taken pursuant to the employer's reasonable workplace drug policy.

The law also created a system for automatic expungements for items classified as minor cannabis offenses. For marijuana-related convictions that do not meet the definition of a minor

cannabis offense, there is also a path for individuals to petition and seek expungement of those records, or for the governor to grant pardons and order the expungement of this information. As passed recently in HB4392, a court may not deny a petition to seal or expunge a record because the petitioner submitted a positive drug test for marijuana within thirty (30) days before the filing of the petition.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

INDIANA

INDIANA

Indiana has a statewide law related to employee drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

Indiana has a limited law related to the use of alcohol and drugs at the workplace, as well as drug testing of employees. In Indiana, an employer may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees, require employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace, require employees to behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 8101 et seq.), and hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that the employer holds other employees, even if the unsatisfactory job performance or behavior is related to the drug use or alcoholism of the employee. The law is not to be construed as encouraging, prohibiting, or authorizing drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on the test results. IC §22-9-5-24.

Statewide Medical Marijuana Law

None.

Statewide Recreational Marijuana Law

None. Although Indiana does not have a medical or recreational marijuana law providing employer or employee protections, recent case law has demonstrated that there are certain protections afforded to employers in relation to employee use of CBD oil. In *Rocchio v. E&B Paving, LLC, International Union of Operating Engineers Local 103*, the employer won its motion for summary judgment following termination of an employee due to a positive drug test for marijuana that was a result of CBD oil use. The court found that no reasonable jury could find the employee's employment was terminated because of a perceived impairment or disability, and not because of the positive drug test. The court pointed to the employer's lack of knowledge of a disability at the time of termination, as the employer was simply told by the third-party administrator that the test was positive for marijuana. Further, the employer treated all positive drug tests consistently and no other evidence was presented that would support a disability discrimination claim.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

IOWA

IOWA

Iowa has a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

Iowa's statewide drug testing law is considered one of the strictest in the country. Employers should consult with qualified legal counsel regarding their workplace drug policies and drug testing practices.

Employers are not required and do not have a legal duty to conduct drug or alcohol testing. However, employers may implement and require drug or alcohol testing at some (but it does not have to be all) of the work sites of the employer. In addition, an employer may test employees and prospective employees for drugs or alcohol as a condition of continued employment or hiring (subject to certain testing requirements). Drug or alcohol testing of employees must occur during or immediately before or after a regular work period. The time required for such testing is deemed work time for the purposes of compensation and benefits.

An employer must pay all actual costs for drug or alcohol testing of employees and prospective employees required by the employer, and all drug and alcohol testing must include confirmation of any initial positive test results. An employee or prospective employee shall be provided an opportunity to provide any information which may be considered relevant to the test, including identification of prescription or nonprescription drugs currently or recently used, or other relevant medical information. To assist an employee or prospective employee in providing this information, the employer shall provide an employee or prospective employee with a list of the drugs to be tested.

An employer may then take adverse employment action, including refusal to hire a prospective employee, based on a confirmed positive test result for drugs or alcohol. Nonetheless, any drug or alcohol testing or retesting by an employer must be carried out within the terms of a written policy which has been provided to every employee subject to testing and is available for review by employees and prospective employees. Amongst other requirements, an employer's written policy must provide uniform requirements for what disciplinary or rehabilitative actions an employer shall take against an employee or prospective employee upon receipt of a confirmed positive test result for drugs or alcohol or upon the refusal of the employee or prospective employee to provide a testing sample.

The law further outlines the notice required in the event of a positive test result for drugs or alcohol for a current employee, as well as the notification requirements for prospective employees. Such notice to a current employee must be delivered by certified mail, return receipt requested. As amended effective July 1, 2025, in lieu of certified mail, an employer may offer an

employee the option to receive notifications and make requests by "in-person exchange of written materials or by electronic notification." House File 767.

Current employees are allowed to request and obtain a confirmatory test of a second sample. There is also no cause of action against an employer based on the failure of the employer to establish a program or policy on substance abuse prevention or to implement any component of testing. Iowa Code §730.5.

Statewide Medical Marijuana Law

Iowa's Medical Cannabidiol Act allows employers to implement policies restricting the use of marijuana by employees for the purpose of promoting workplace health and safety, include in a contract with an employee a provision prohibiting the use of marijuana, as well as establish and enforce a zero-tolerance drug policy or drug-free workplace. Furthermore, employers are not required to permit or accommodate the use, consumption, possession, transfer, display, transportation, distribution, sale, or growing of marijuana in the workplace. Iowa Code §124E-21.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

KANSAS

KANSAS

Kansas does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

None.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

KENTUCKY

KENTUCKY

Kentucky does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

Executive Order 2022-798 was issued on November 15, 2022 granting a full, complete and conditional pardon to any and all persons who, after January 1, 2023, are accused of marijuana possession provided specific conditions are met as outlined in the order. Therefore, individuals with certain severe medical conditions who meet the criteria outlined in the order may possess and use small amounts of legally purchased medical marijuana to treat their conditions.

Senate Bill 47 legalizes medical marijuana. SB 47 goes into effect January 1, 2025.

SB 47 contains extensive protections for employers. Specifically, employers are not required to permit or accommodate the use, consumption, possession, transfer, display, transportation, distribution, sale or growing of medical cannabis in the workplace.

Further employers are allowed to:

- Implement policies promoting workplace health and safety by:
    - Restricting use of medical cannabis by employees; or
    - Restricting or prohibiting the use of equipment, machinery or power tools by an employee who is a registered qualifying patient if the employer believes such use poses an unreasonable safety risk.
- Include in any contract provisions that prohibit medical cannabis use.
- Establish and enforce a drug testing policy, drug-free workplace, or zero tolerance drug policy.
- Exercise the ability to determine impairment of an employee who is a cardholder. This includes behavioral assessments of impairment and a secondary step of testing an employee by an established method. If an employer determines the employee is impaired, the burden of proof shifts to the employee to refute the findings.

Employers are also protected from a cause of action related to wrongful discharge or discrimination, and will not be penalized or denied any benefit under state law for employing a cardholder

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

LOUISIANA

LOUSIANA

Louisiana has a statewide law that regulates employment-related drug testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

Any employee confirmed positive, upon written request, has the right to access, within seven working days, records related to their drug test and the results of any relevant certification, review, or suspension/revocation-of-certification proceedings. Employers may, but are not required to, afford an employee whose drug test is certified positive by the medical review officer the opportunity to undergo rehabilitation without termination of employment. La. Rev. Stat. §49:1011.

There are also provisions governing public employer actions with respect to drug testing and workplace policies.

Statewide Medical Marijuana Law

Louisiana's law regulating medical marijuana does not set forth any employment-related provisions specific to private employers.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

MAINE

Maine has a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

In Maine, before establishing any substance use testing program for employees, an employer with over 20 full-time employees must have a functioning employee assistance program certified by the Department of Health and Human Services. An employer can meet this requirement by participating in a cooperative employee assistance program that serves the employees of more than one employer.

In addition, before establishing a substance use testing program an employer must have a written policy that provides for, among other things, (i) the procedures and consequences of an employee's voluntary admission of a substance use problem and available assistance; and (ii) when substance use testing may occur, including which positions, if any, will be subject to testing, including any positions subject to random or arbitrary testing, and the procedure to be followed in selecting employees to be tested on a random or arbitrary basis. The employer must provide each employee with a copy of the written policy approved by the Department of Labor at least 30 days before any portion of the written policy applicable to employees takes effect. Furthermore, an employer cannot require or request that an employee or applicant sign or agree to any form or agreement that attempts to absolve the employer from liability arising out of the substance use test, or waive an employee's or applicant's rights or diminish an employer's obligations with respect to testing procedures. 26 Me. Rev. Stat. §683.

An employer may require or request that an applicant submit to a substance use test only if the applicant has been offered employment with the employer or the applicant has been offered a position on a "roster of eligibility" from which applicants are selected for employment. The offer of employment or offer of a position on a roster of eligibility may be conditioned on the applicant receiving a negative test result. Types of testing for employees include, subject to certain requirements, probable cause testing, random or arbitrary testing (only under certain circumstances, one of which includes if an employee works in a position the nature of which would create an unreasonable threat to the health or safety of the public or the employee's coworkers if the employee were under the influence of a substance), testing while undergoing rehabilitation or treatment, and testing upon return to work. 26 Me. Rev. Stat. §684.

The law also governs what actions employers may take based on substance use tests, including allowing an employer to refuse to hire an applicant, or discharge or discipline an employee, based on confirmed positive results or an applicant’s or employee’s refusal to submit to a test. Before taking any such action, an employer must provide an employee with an opportunity to participate for up to 6 months in a rehabilitation program designed to enable the employee to

avoid future use of a substance and to participate in an employee assistance program, if the employer has such a program. An employer who tests a person as an applicant and employs that person prior to receiving the test result may take no action on a positive result except in accordance with the employee provisions of the employer's approved policy. 26 Me. Rev. Stat. §685.

Maine's Department of Labor offers example model policy language for applicant testing policies and employee testing policies (which are more complex than applicant testing policies).

Statewide Medical Marijuana Law

The Maine Medical Use of Cannabis Act specifies that an employer is not required to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana. 22 Me. Rev. Stat. §2426. An employer may not refuse to employ or otherwise penalize a person solely for that person's status as a qualifying patient or a caregiver unless failing to do so would put the employer in violation of federal law or cause it to lose a federal contract or funding. 22 Me. Rev. Stat. §2430-C.

Statewide Recreational Marijuana Law

The Maine Cannabis Legalization Act provides that an employer is not required to permit or accommodate the use, consumption, possession, trade, display, transportation, sale or cultivation of marijuana or marijuana products in the workplace. Employers may still enact and enforce workplace policies restricting the use of marijuana and marijuana products by employees in the workplace or while otherwise engaged in activities within the course and scope of employment. Employers may also discipline employees who are under the influence of marijuana in the workplace or while otherwise engaged in activities within the course and scope of employment in accordance with the employer's workplace policies regarding the use of marijuana and marijuana products by employees. 28-B Me. Rev. Stat. §112.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

MARYLAND

Maryland has a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

Maryland has specific procedures employers must follow when it comes to drug and alcohol testing. An employer who requires any person to be tested for job–related reasons for the use or abuse of any controlled dangerous substance or alcohol must have the specimen tested by a laboratory that holds a Maryland permit or is certified and otherwise approved. At the time of testing, if requested by the individual, an employer must inform the person of the name and address of the laboratory that will test the specimen.

In addition, for any employer that performs preliminary preemployment screening for a controlled dangerous substance must follow specific standards, which includes establishing and maintaining training records that document the training required to properly perform a screening procedure. More specifically, employers need to keep record of the training received by a trainee, document that a trainee has demonstrated competency in performing the screening procedure and maintain for at least two years documentation that the trainee has been trained.

Furthermore, an employer who requires any employee, contractor, or other person to be tested for job–related reasons for the use or abuse of any controlled dangerous substance or alcohol and who receives notice from the laboratory that an employee, contractor, or other person has tested positive for the use or abuse of any controlled dangerous substance or alcohol must, after confirmation of the test result, provide the employee, contractor, or other person with: (i) a copy of the lab test; (ii) a copy of the employer's written policy on the use or abuse of controlled dangerous substances or alcohol; (iii) if applicable, written notice of the employer's intent to take disciplinary action, terminate employment or change the conditions of continued employment; and (iv) a statement permitting an employee to request independent testing of the same sample for verification of the test result. This information must be delivered by certified mail or in person and be sent within 30 days from the date the test was performed. Md. Health-General Code Ann. §17-214.

Statewide Medical Marijuana Law

While Maryland’s medical marijuana law provides that qualifying patients must not be denied any right or privilege as the result of a medical marijuana status, provided the patient is complying with the law, the Maryland Medical Cannabis Commission has clearly stated that law does not prevent employers from testing for marijuana use (for any reason), and it does not protect employees who test positive for marijuana use (for any reason). (*See* Md. Health-General Code Ann. §13-3313 and http://mmcc.maryland.gov/Pages/patients_faq.aspx).

Statewide Recreational Marijuana Law

In the 2022 elections, Maryland voters approved Question 4 on the ballot which legalizes recreational marijuana use starting July 1, 2023. Several bills were passed in the 2022 legislative session to support this legalization pending voters approval. This includes House Bill 837 which defines "personal use amount". From January 1, 2023 through June 30, 2023, possession of the personal use amount of cannabis allowed under the law is a civil offense. House Bill 837 also creates an expungement process where individuals convicted of cannabis possession or intent to distribute may file a petition for expungement. By July 1, 2024, the Maryland Department of Public Safety and Correctional Services must automatically expunge all cases in which the possession of cannabis is the only charge in the case and the charge was issued before July 1, 2023.

Employers should monitor the ongoing developments in Maryland related to recreational marijuana legalization for any potential impacts to their workplace and/or drug testing policies.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

MASSACHUSETTS

MASSACHUSETTS

Massachusetts does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

Massachusetts' regulations regarding medical marijuana provide that employers are not required to accommodate any on-site medical use of marijuana in any place of employment. 935 CMR 501.840.

Employers should review a Supreme Judicial Court ruling from 2017. In *Barbuto v. Advantage Sales and Marketing, LLC*, the Supreme Judicial Court held that a patient who qualifies for the medical use of marijuana and has been terminated from her employment because she tested positive for marijuana, as a result of her lawful medical use of marijuana, may seek a civil remedy against her employer through claims of handicap discrimination in violation of Massachusetts' laws prohibiting discrimination in the workplace. Notably, the court determined the employer must engage in an interactive process to determine if a reasonable accommodation could be made for medical marijuana use (much as they would for another type of disability).

Statewide Recreational Marijuana Law

Massachusetts' law regarding recreational marijuana provides that an employer is not required to permit or accommodate marijuana use in the workplace. Employers may still enact and enforce workplace policies restricting the consumption of marijuana by employees. Mass. Gen. Laws ch. 94G, § 2.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

MICHIGAN

MICHIGAN

Michigan does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

Michigan's Medical Marihuana Act (MMA) provides that employers are not required to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana. Mich. Comp Laws §333.26427.

In *Eplee v. City of Lansing*, an applicant's employment offer was withdrawn following a positive marijuana drug test. The Michigan Court of Appeals upheld the employer's action, finding the MMA "does not provide an independent right protecting the medical use of marijuana in all circumstances, nor does it create a protected class for users of medical marijuana." Furthermore, the court held that because Michigan is an at-will state, a conditional offer of employment could be rescinded for any reason or for no reason at all.

Further, in *Casias v. Wal-Mart Stores, Inc.*, an employee, who was a medical marijuana user, contended that Wal-Mart wrongfully discharged him in violation of Michigan's Medical Marihuana Act after he tested positive for marijuana in violation of Wal-Mart's drug use policy. The court held that the MMA legalizing medical marijuana "does not impose restrictions on private employers."

Statewide Recreational Marijuana Law

The Michigan Regulation and Taxation of Marihuana Act (the "Act") provides that an employer is not required to permit or accommodate conduct otherwise allowed by the Act in any workplace or on the employer's property. The Act also does not prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while under the influence of marihuana. Employers are not prevented from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's violation of a workplace drug policy or because that person was working while under the influence of marihuana. Mich. Comp Laws §333.27954.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

MINNESOTA

MINNESOTA

Minnesota has a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

Minnesota has arguably one of the most job applicant and employee friendly drug testing laws in the country – the Drug and Alcohol Testing in the Workplace Act (DATWA).

Employers do not have a legal duty to request or require an employee or job applicant to undergo drug or alcohol testing, but if an employer does so it must follow the requirements and procedures set forth in DATWA. For instance, an employer may not request or require an employee or job applicant to undergo drug or alcohol testing unless the testing is done pursuant to a written drug and alcohol testing policy that contains the minimum information required in the law and is conducted by a testing laboratory that is licensed, accredited or certified pursuant to Minnesota's employment drug and alcohol testing laws (specifically Minn. Stat. §181.953). An employer may also not request or require an employee or job applicant to undergo drug and alcohol testing on an arbitrary and capricious basis. Minn. Stat. §181.951.

An employer may request or require a *job applicant* to undergo drug and alcohol testing provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for that position. Minn. Stat. §181.951.

An employer may request or require *employees* to undergo drug and alcohol testing on a random selection basis only if: (i) they are employed in safety-sensitive positions; or (ii) they are employed as professional athletes, if the professional athlete is subject to a collective bargaining agreement permitting random testing (but only to the extent consistent with the collective bargaining agreement). Further, employers may request or require employees to undergo routine drug and alcohol testing provided the testing is required no more than once annually and the employee has been provided at least two weeks' written notice that such test may be required. There are also regulations around reasonable suspicion testing included within the law. Minn. Stat. §181.951.

An employer's drug and alcohol testing policy must, at a minimum, set forth the following information: (i) the employees or job applicants subject to testing under the policy; (ii) the circumstances under which drug or alcohol testing may be requested or required; (iii) the right of an employee or job applicant to refuse to undergo drug and alcohol testing and the consequences of refusal; (iv) any disciplinary or other adverse personnel action that may be taken based on a confirmed positive test result; (v) the right of an employee or job applicant to explain a positive test result on a confirmatory test, or request and pay for a confirmatory retest; and (vi) any other appeal procedures available. Once a policy is adopted, the employer must provide written notice of the policy to all affected employees, to a previously nonaffected

employee upon transfer to an affected position under the policy, and to a job applicant upon hire and before any testing of the applicant if the job offer is made contingent on the applicant passing drug and alcohol testing. An employer must also post notice in an appropriate and conspicuous location on the employer's premises that the employer has adopted a drug and alcohol testing policy and that copies of the policy are available for inspection during regular business hours by its employees or job applicants in the employer's personnel office or other suitable locations. Minn. Stat. §181.952.

If a job applicant or employee tests positive, the individual must be given written notice of the right to explain the positive test and the employer may request that the employee or job applicant indicate any over-the-counter or prescription medication that the individual is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result. Within three working days after notice of a positive test result on a confirmatory test, the employee or job applicant may submit information to the employer, in addition to any information already submitted under paragraph (b), to explain that result, or may request a confirmatory retest of the original sample at the employee's or job applicant's own expense as provided under DAWTA. Minn. Stat. §181.953.

Further, the law prohibits employers from discharging, disciplining, discriminating against, or requesting or requiring rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test. If a job applicant has received a job offer made contingent on the applicant passing drug and alcohol testing, the employer may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. Minn. Stat. §181.953.

DATWA was amended effective August 1, 2024 to allow oral fluid testing. The law requires employees to be notified of the test result at the time of the test. Within 48 hours of an oral fluid test that indicates a positive result, or an inconclusive or invalid result, the employee or job applicant may request further testing at no cost. Any further retesting is done at the expense of the employee.

Important Amendments:

DATWA was amended via the bill that legalized recreational marijuana. The bill created a separate definition for cannabis testing essentially creating a separate reference to cannabis testing wherever drug or alcohol testing is discussed.

Employers are now prohibited from requesting or requiring a job applicant to undergo cannabis testing solely for the purpose of determining the presence or absence of cannabis as a condition of employment unless otherwise required by state or federal law. Further, unless otherwise required by state or federal law, an employer may not refuse to hire a job applicant solely because the job applicant submits to a cannabis test and the results indicate the presence of cannabis. Additionally, employers cannot request or require an employee or job applicant to undergo cannabis testing on an arbitrary or capricious basis.

There are several exceptions to these new cannabis testing prohibitions including if the position is safety-sensitive, the position will involve children, vulnerable adults, or patients who receive

health care services from a provider for treatment, the position requires a commercial driver's license or requires an employee to operate a motor vehicle for which state or federal law requires testing, or any other position for which state or federal law requires testing of an applicant or employee for cannabis.

Employers are not required to permit or accommodate cannabis products outlined in the bill, or permit or accommodate the use, possession, impairment, sale or transfer of such products while an employee is working or while an employee is on the employer's premises or operating the employer's vehicle, machinery, or equipment.

The amendments also impact when an employer may enact and enforce written work rules regarding various cannabis products in addition to when an employer may discipline, discharge or take other adverse action against an employee for product use, possession, sale or transfer while an employee is working, is on the employer's premises or is operating the employer's vehicle, machinery or equipment.

There are further requirements in DATWA and the new amendments related to items such as privacy and confidentiality of test results, in addition to limited exemptions. Employers are encouraged to work with qualified legal counsel with respect to the various provisions of this extensive law.

Statewide Medical Marijuana Law

Minnesota's law regarding medical marijuana specifically states that nothing in the law permits any person to engage in and does not prevent the imposition of any penalty for vaporizing or combusting medical cannabis in a place of employment, or for undertaking any task under the influence of medical cannabis that would constitute negligence or professional malpractice. Minn. Stat. §152.23.

In addition, unless a failure to do so would violate federal law or cause an employer to lose a monetary or licensing-related benefit under federal law, an employer may not discriminate against a person in hiring, termination, or any terms of employment, or otherwise penalize a person if the discrimination is based on the person's status as a verified medical marijuana patient, person's status as a Tribal medical cannabis program patient, or a patient's positive drug test for cannabis components or metabolites, unless the patient used, possessed, or was impaired by medical cannabis on the employer's premises or during work hours. Also, an employee may present verification of being a legal medical marijuana patient for the purposes of explaining a positive marijuana drug test. Minn. Stat. §152.32.

An employer must provide written notice at least 14 days before the employer takes an action against the individual that is prohibited by the law. The written notice must cite the specific federal law or regulation that the employer believes would be violated if the employer fails to take action. The notice must specify what monetary or licensing-related benefit under federal law or regulations that the employer would lose if the employer fails to take action.

Statewide Recreational Marijuana Law

HF 4065 legalizes "edible cannabinoid product(s)" containing certified hemp-derived THC at limited amounts. While the bill includes several provisions regulating these products, it does not address any employer-related provisions. With more individuals likely to consume edibles, and consequently test positive for marijuana, employers should review their workplace policies including how they use drug test results in employment decisions.

Chapter 63, House File 100 was signed into law on May 30, 2023 legalizing recreational marijuana. Adult-use of marijuana is permissible beginning August 1, 2023. In addition to the extensive DATWA amendments, the bill amends Minnesota's lawful use statute to include cannabis flower, cannabis products, lower-potency hemp edibles and hemp-derived consumer products noting that these are lawful consumable products in Minnesota regardless of whether federal or other state law considers such items to be unlawful.

Employers may still discipline or discharge an employee for using, possessing, selling or transferring, or being impaired by any of the items during working hours, on work premises, or while operating an employer's vehicle, machinery or equipment, or if a failure to do so would violate federal or state law or regulations or cause an employer to lose a monetary or licensing-related benefit under federal law or regulations.

The bill also decriminalizes cannabis use and possession of certain amounts and establishes the Cannabis Expungement Board including provisions for the automatic expungement of lower-level cannabis offenses.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

MISSISSIPPI

MISSISSIPPI

Mississippi has a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

A public or private employer can elect to conduct drug and alcohol testing, but employers are not required to do so. If an employer does elect to conduct such testing it does need to follow Mississippi's statute regarding drug and alcohol testing of employees. Any employee who may be required by an employer to submit to a drug and alcohol test must be provided, at least thirty days prior to the implementation of a drug and alcohol testing program, a written policy statement. The written policy statement must include, among other things, a general statement of the employer's policy on employee drug use and identify both the grounds on which an employee may be required to submit to a drug and alcohol test and the actions the employer may take against an employee on the basis of a positive confirmed drug and alcohol test result, or other violation of the employer's drug use policy. An employer must make copies of the policy available for inspection by employees during regular business hours in the employer’s personnel office (or other suitable locations). In addition, an employer who conducts job applicant drug and alcohol testing must notify the applicant, in writing, upon application and prior to the collection of the specimen for the drug and alcohol test, that the applicant may be tested for the presence of drugs. Miss. Code Ann. §71-7-3.

An employee or job applicant required to submit to a drug and alcohol test may be requested by an employer to sign a statement indicating that he has read and understands the employer's drug and alcohol testing policy and/or notice. An employee's or job applicant's refusal to sign the statement does not invalidate the results of any drug or alcohol test, or bar the employer from: (i) administering the drug and alcohol test; (ii) taking action consistent with an applicable collective bargaining agreement or the employer's drug and alcohol testing policy; or (iii) refusing to hire the job applicant. Miss. Code Ann. §71-7-3.

An employer is authorized to conduct the following types of drug and alcohol tests: (i) require job applicants to submit to a drug and alcohol test as a condition of the employment application and use a refusal to submit to a test or positive confirmed test result as a basis for refusal to hire; (ii) require all employees to submit to reasonable suspicion drug and alcohol testing; (iii) require all employees to submit to neutral selection drug and alcohol testing; or (iv) administer drug and alcohol testing or require that the employee submit himself to drug and alcohol testing in the event that the employee sustains an injury at work or asserts a work-related injury. Miss. Code Ann. §71-7-5.

Drug and alcohol testing conducted by the employer must occur during or immediately after the regular work period for current employees and is deemed to be performed during work time for

compensation and benefits purposes. Within five (5) working days after receipt of a positive confirmed test result report from the laboratory that conducted the test, an employer must, in writing, inform an employee of such positive test result and inform the employee in writing of the consequences of such a report and the options available to them. An employee may request and receive from the employer a copy of the test result report, and may submit information to the employer explaining the test results including why the results do not constitute a violation of the employer's policy. If an employee's explanation of the positive test results is not satisfactory to the employer, a written explanation submitted by the employer as to why the employee's explanation is unsatisfactory, along with the report of positive results, shall be made a part of the employee's medical and personnel records. Unless otherwise noted in the law, an employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result that has not been verified by a confirmatory test. Employers are also responsible for paying the cost of drug and alcohol tests required or requested of job applicants or employees. Additional drug and alcohol test cost may be paid by the job applicant or employee. Miss. Code Ann. § 71-7-9.

There are numerous other provisions within the state's drug and alcohol testing law that impacted employers should review including the fact that an employee or job applicant whose drug and alcohol test result is confirmed as positive in accordance with the provisions of the law is not, by virtue of the result alone, defined as a person with a "handicap" and is considered to have been discharged for willful misconduct.

Statewide Medical Marijuana Law

The Mississippi Medical Cannabis Act expressly provides that employers are not required to permit, accommodate, or allow the medical use of medical cannabis, or to modify any job or working conditions of any employee who engages in the medical use of medical cannabis. Employers can still establish and enforce a drug-testing policy, and employers can refuse to hire, discharge, discipline, or take adverse employment action against an individual with respect to hiring, discharging, tenure, terms, conditions, or privileges of employment as a result of that individual's medical use of medical cannabis (regardless of the individual's impairment or lack of impairment resulting from the medical use of medical cannabis). In addition, an employer is not prohibited from disciplining an employee for ingesting medical cannabis in the workplace or for working while under the influence of medical cannabis.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

MISSOURI

MISSOURI

Missouri does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None. While Missouri does not have a drug testing statute, employers must meet certain drug testing requirements in order to challenge workers' and unemployment compensation claims.

Statewide Medical Marijuana Law

Article XIV of the Missouri Constitution provides that Missouri's medical marijuana law does not permit a person to bring a claim against any employer, former employer, or prospective employer for wrongful discharge, discrimination, or any similar cause of action, based on the employer, former employer, or prospective employer prohibiting the employee, former employee, or prospective employee from being under the influence of marijuana while at work or disciplining the employee or former employee, (up to and including termination from employment) for working or attempting to work while under the influence of marijuana.

In the 2022 election, Missouri voters approved Amendment 3 which will amend the Missouri Constitution including provisions related to the medical marijuana law. Under the Amendment (effective December 8, 2022), unless a failure to do so would cause an employer to lose a monetary or licensing-related benefit under federal law, an employer may not discriminate against a person in hiring, termination or any term or condition of employment or otherwise penalize a person, if the discrimination is based upon either of the following: (a) the person's status as a qualifying patient or primary caregiver who has a valid identification card, including the person's legal use of a lawful marijuana product off the employer's premises during nonworking hours, unless the person was under the influence of medical marijuana on the premises of the place of employment or during the hours of employment; or (b) a positive drug test for marijuana components or metabolites of a person who has a valid qualifying patient identification card, unless the person used, possessed, or was under the influence of medical marijuana on the premises of the place of employment or during the hours of employment.

Nothing in the amended law shall apply to an employee in a position in which legal use of a lawful marijuana product affects in any manner a person's ability to perform job-related employment responsibilities or the safety of others, or conflicts with a bona fide occupational qualification that is reasonably related to the person's employment.

Statewide Recreational Marijuana Law

In the 2022 election, Missouri voters approved Amendment 3 which will amend the Missouri Constitution legalizing the recreational use of marijuana. Amendment 3 includes provisions related to expungement petitions for certain marijuana-related offenses as well as automatic

expungements for minor misdemeanor offenses for individuals no longer incarcerated. Employers may continue to enforce workplace drug policies including prohibiting the use of marijuana in the workplace and disciplining employees for working under the influence of marijuana.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

MONTANA

MONTANA

Montana has a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

An employer may test any prospective employee as a condition of hire provided they have a qualified testing program which includes conducting testing according to the terms of written policies and procedures that are adopted by the employer and made available for review by employees sixty (60) days before the terms are implemented or changed. The law outlines specific criteria for the policies and procedures including, but not limited to, the employer's standards of conduct that regulate the use of controlled substances and alcohol by employees, a description of available employee assistance programs and a description of the employer's hiring policy with respect to prospective employees who test positive. Testing must be done at the employer's expense, and employees must be compensated for their time spent submitting to a test. Before an employer may take any action based on a positive test result, the employer shall have the results reviewed and certified by a medical review officer who is trained in the field of substance abuse. An employee or prospective employee must be given the opportunity to provide notification to the medical review officer of any medical information that is relevant to interpreting test results, including information concerning currently or recently used prescription or nonprescription drugs. Mont. Code. Ann. §39-2-207.

An employer may also use random testing if the employer's controlled substance and alcohol policies include one or both of the following procedures: (i) an employer may establish a date when all employees will be required to undergo controlled substance and/or alcohol tests; (ii) an employer may manage or contract with a third party to establish and administer a random testing process. Employers should review the law for the specific requirements for the random testing process. An employer may also require follow up tests, reasonable suspicion tests, and post-accident testing. Mont. Code Ann. §39-2-208.

An employer must provide an employee who has been tested under any qualified testing program with a copy of the test report. An employer is also required to obtain, at the employee's request, an additional test of the split sample by an independent laboratory selected by the person tested. The employer shall pay for the additional tests if the additional test results are negative, and the employee shall pay for the additional tests if the additional test results are positive. The employee must be provided the opportunity to rebut or explain the results of any test. Mont. Code Ann. §39-2-209.

No adverse action (including follow-up testing) can be taken by the employer if the employee presents a reasonable explanation or medical opinion indicating that the original test results were not caused by the illegal use of controlled substances or alcohol consumption, and if the

employee presents a reasonable explanation or medical opinion, the test results must be removed from the employee's record and destroyed. Mont. Code Ann. §39-2-210.

Statewide Medical Marijuana Law

No provisions impacting employers.

Statewide Recreational Marijuana Law

Under the Marijuana Regulation and Taxation Act, employers are not required to permit or accommodate marijuana use in any workplace or on the employer's property, and employers are not prohibited from disciplining an employee for violation of a workplace drug policy or for working while intoxicated by marijuana. Employers may still refuse to hire, discharge, discipline, or take adverse employment action against an individual with respect to hire, tenure, terms, conditions, or privileges of employment because of the individual's violation of a workplace drug policy or intoxication by marijuana while working. Employers also are not prohibited form including in any contract a provision prohibiting the use of marijuana for a debilitating medical condition. The law also does not permit a cause of action against an employer for wrongful discharge or discrimination. Mont. Code Ann. §16-12-108. Individuals may also petition for expungement or resentencing of certain marijuana-related offenses.

However, employers cannot deny job applicants or discriminate against current employees because of their use of lawful products during nonworking hours off the employer's premises. Yet, this does not apply to the use of marijuana that affects an individual’s ability to perform job-related employment responsibilities or the safety of other employees, or that conflicts with a bona fide occupational qualification that is reasonably related to the individual’s employment. Mont. Code Ann. §39-2-313.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

NEBRASKA

NEBRASKA

Nebraska has a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

Employers may, but are not required to, conduct drug and alcohol testing.

Any results of a drug or alcohol test performed on an employee, as directed by the employer, must not be used to deny any continued employment or in any disciplinary or administrative action unless: (i) a positive finding of drugs by preliminary screening procedures has been subsequently confirmed by gas chromatography-mass spectrometry or other scientific testing technique which has been or may be approved by the department of health and human services (Department); and (ii) a positive finding of alcohol by preliminary screening procedures is subsequently confirmed by either gas chromatography with flame ionization detector or other scientific testing technique approved by the Department, or a breath testing device operated by a breath-testing-device operator. Employees may request further confirmation of any breath-testing results by a blood sample if the employee voluntarily submits to give a blood sample taken by qualified medical personnel in accordance with the rules and regulations of the Department. If the confirmatory blood test results do not confirm a violation of the employer's work rules, any disciplinary or administrative action must be rescinded. Neb. Rev. Stat. §48-1903. Any employee who refuses to provide a body fluid or breath sample as part of the employer’s drug and alcohol testing, may be subject to disciplinary or administrative action by the employer, including denial of continued employment. Neb. Rev. Stat. §48-1910.

Statewide Medical Marijuana Law

None.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

NEVADA

NEVADA

Nevada does not have a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

However, Nevada law does regulate actions employers may take based on a positive test for marijuana. Except as otherwise provided by law, it is unlawful for any employer to fail or refuse to hire a prospective employee because the prospective employee submitted to a screening test (meaning the test of a person's blood, urine, hair or saliva to detect the general presence of a controlled substance or any other drug) and the results of the screening test indicate the presence of marijuana. However, this does not apply if the prospective employee is applying for the following: (i) as a firefighter; (ii) as an emergency medical technician; (iii) a position that requires an employee to operate a motor vehicle and for which federal or state law requires the employee to submit to screening tests; or (iv) that, in the determination of an employer, could adversely affect the safety of others. If an employer requires an employee to submit to a screening test within the first thirty (30) days of employment, the employee has the right to submit to an additional screening test, at the employee's expense, to rebut the results of the initial screening test. However, these provisions do not apply to the extent they are inconsistent or conflict with the provisions of an employment contract, collective bargaining agreement, or federal law, or to a position of employment funded by a federal grant. Nev. Rev. Stat. §613.132.

Statewide Medical Marijuana Law

Nevada's provisions regarding the medical use of cannabis specifically provide that employers are not required to allow the medical use of cannabis in the workplace. Also, subject to certain exceptions, employers are not required to modify a job or working conditions of a person who engages in the medical use of cannabis that are based on the reasonable business purpose of the employer, but the employer still must attempt to make reasonable accommodations for the medical needs of an employee who engages in the medical use of cannabis if the employee holds a valid registry ID card; provided that the accommodation would not: (i) pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or (ii) prohibit the employee from fulfilling their job responsibilities. Nev. Rev. Stat. §678C.850.

Statewide Recreational Marijuana Law

Nevada's provisions regarding the recreational use of cannabis similarly provide that employers are not prohibited from maintaining, enacting and enforcing a workplace policy prohibiting or restricting the use of cannabis. Nev. Rev. Stat. §678D.510.

In *Ceballos v. NP Palace, LLC*, the Supreme Court of Nevada determined that Nevada's "lawful use" statute did not extend to adult recreational marijuana use given marijuana remains illegal under federal law, and Nevada's lawful use statute protected activity that is lawful under both state and federal law – not just state law. Further, the Supreme Court of Nevada noted that employers are allowed to enforce workplace drug policies, which includes regulating recreational marijuana use in the workplace.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

NEW HAMPSHIRE

NEW HAMPSHIRE

New Hampshire does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

The New Hampshire Compassionate Use Medical Marijuana Act specifically provides that employers are not required to accommodate the therapeutic use of cannabis on the property or premises of employment, and employers may still discipline an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis. N.H. Rev. Stat. §126-X:3.

Employers should review *Paine v. Ride-Away, Inc.*. In this case, the New Hampshire Supreme Court issued an opinion ruling that the employee satisfied the definition of "disability" following his argument he used marijuana to treat PTSD as the PTSD was the disability and not the illegal use of or addiction to a controlled substance. The employee was wrongfully terminated as there was no attempt on behalf of the employer to accommodate his request. It is a discriminatory practice for an employer not to accommodate an employee with a known disability unless that accommodation would impose an undue hardship. In this case, the accommodation that was necessary for the employee to carry out his job was an exemption from the drug testing policy.

Statewide Recreational Marijuana Law

None. New Hampshire decriminalized certain marijuana-related offenses notably first-time possession of minor amounts.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

NEW JERSEY

NEW JERSEY

New Jersey does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

Under the Jake Honig Compassionate Use Medical Cannabis Act, it is unlawful for employers to take adverse employment action against employees that are registered qualifying patients based solely on the employee's status as a registrant. If an employer has a drug testing policy and an employee or job applicant tests positive for cannabis, the employer must offer the employee or job applicant an opportunity to present a legitimate medical explanation for the positive test result and provide written notice of the right to explain to the employee or job applicant. Also, within three working days after receiving such notice, the employee or job applicant may submit information to the employer to explain the positive test result, or may request a confirmatory retest of the original sample at the employee's or job applicant's own expense. As part of an employee's or job applicant's explanation for the positive test result, the employee or job applicant may present an authorization for medical cannabis issued by a health care practitioner, proof of registration with the commission, or both. However, employers may prohibit or take adverse employment action for the possession or use of intoxicating substances during work hours or on the premises of the workplace outside of work hours. Additionally, employers are not required to commit any act that would lead them to violate federal law, that would result in a loss of a licensing-related benefit pursuant to federal law, or that would result in the loss of a federal contract or federal funding. N.J. Rev. Stat. §24:6I-6.1.

New Jersey is perhaps one of the hottest states from a litigation perspective on the issue of marijuana use and employment impacts. The New Jersey Supreme Court has ruled that a patient covered by the state's medical marijuana act can sue for employment discrimination under the LAD for adverse employment actions based on offsite medical marijuana use. In a separate case, an employer was ordered to reimburse medical marijuana costs. In this case, the judge analyzed the side effects of opioids and marijuana, concluding marijuana was the appropriate option especially since the former employee had a history of opioid addiction.

In *Cotto, Jr. v. Ardagh Glass Packing, Inc.*, a New Jersey court ruled in favor of an employer who refused to waive a drug test as a reasonable accommodation. In this case, the court determined no reasonable accommodation was needed for an employee who returned to work with a doctor's recommendation for medical marijuana after he experienced an accident on the job. Ultimately, the court concluded that under New Jersey's Compassionate Use Medical Marijuana Act

employers are not required to permit the use of medical marijuana in the workplace, and private employers are not required to waive drug tests for users of medical marijuana.

Statewide Recreational Marijuana Law

The New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act imposes many restrictions on employers. Employers cannot refuse to hire or employ someone, or discharge from employment or take adverse action against an employee with respect to compensation, terms, conditions or other privileges of employment because that person does or does not use cannabis items. An employee cannot be subject to any adverse action by an employer solely due to the presence of cannabinoid metabolites in the employee's bodily fluid from engaging in the lawful use of cannabis. However, an employer may require an employee to undergo a drug test upon reasonable suspicion of an employee's usage of a cannabis item while engaged in the performance of the employee's work responsibilities, or upon finding any observable signs of intoxication related to usage of a cannabis item or following a work-related accident subject to investigation by the employer. A drug test may also be done randomly by the employer, or as part of a pre-employment screening, or regular screening of current employees to determine use during an employee's prescribed work hours. Employers may still maintain a drug- and alcohol-free workplace. Employers are also not required to permit or accommodate the use, consumption, being under the influence, possession, transfer, display, transportation, sale, or growth of cannabis or cannabis items in the workplace. N.J. Rev. Stat. §24:6I-52.

The New Jersey Cannabis Regulatory Commission ("NJ-CRC") is charged with prescribing standards for a Workplace Impairment Recognition Expert ("WIRE") certification, to be issued to full- or part-time employees, or others contracted to perform services on behalf of an employer, based on education and training in detecting and identifying an employee's usage of, or impairment from, a cannabis item or other intoxicating substance, and for assisting in the investigation of workplace accidents.

In September 2022, the NJ-CRC issued guidance on workplace impairment until standards are formulated and approved for WIRE certifications. The guidance notes that a scientifically reliable objective testing method that indicates the presence of cannabinoid metabolites in the employee's bodily fluid alone is insufficient to support an adverse employment action. However, such a test combined with evidence-based documentation of physical signs or other evidence of impairment during an employee's prescribed work hours may be sufficient to support an adverse employment action.

In order to demonstrate physical signs or other evidence of impairment sufficient to support an adverse employment action against an employee for suspected cannabis use or impairment during an employee's prescribed work hours employers may:

- Designate an interim staff member to assist with making determinations of suspected cannabis use during an employee's prescribed work hours. This employee:
    - Should be sufficiently trained to determine impairment and qualified to complete the Reasonable Suspicion Observation Report; and

    - May be a third-party contractor.
- Utilize a uniform "Reasonable Suspicion" Observation Report that documents the behavior, physical signs, and evidence that support the employer's determination that an employee is reasonably suspected of being under the influence during an employee's prescribed work hours

An example Reasonable Suspicion Observation Report is available: https://www.nj.gov/cannabis/documents/businesses/Business%20Resources/Workplace%20Impairment%20Guidance%20Sample%20Form.pdf. This report outlines example physical signs and symptoms as well as example behavioral indicators.

An employer may use a cognitive impairment test, a scientifically valid, objective, consistently repeatable, standardized automated test of an employee's impairment, and/or an ocular scan, as physical signs or evidence to establish reasonable suspicion of cannabis use or impairment at work.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

NEW MEXICO

NEW MEXICO

New Mexico does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

Under New Mexico's law regulating the medical use of marijuana, the Lynn and Erin Compassionate Use Act (the "Act"), unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law, it is unlawful for an employer to take an adverse employment action against an applicant or an employee based on conduct allowed under the Act. However, the Act does not: (i) restrict an employer's ability to prohibit or take adverse employment action against an employee for use of, or being impaired by, medical cannabis on the premises of the place of employment or during the hours of employment; or (ii) apply to an employee whose employer deems that the employee works in a safety-sensitive position. N.M. Stat. §26-2B-9.

Employers are not required to provide accommodations for medical marijuana use as outlined in *Garcia v. Tractor Supply Co*.

Statewide Recreational Marijuana Law

Unless there is an agreement between the employer and employee, nothing in the Cannabis Regulation Act: (i) restricts an employer's ability to prohibit or take an adverse employment action against an employee for impairment by or possession or use of intoxicating substances at work or during work hours; (ii) requires an employer to commit any act that would cause the employer to be noncompliant with or in violation of federal law or that would result in the loss of a federal contract or federal funding; or (iii) prevents or infringes upon the rights of an employer to adopt and implement a written zero-tolerance policy regarding the use of cannabis products. A zero-tolerance policy may permit the discipline or termination of an employee on the basis of a positive drug test that indicates any amount of THC or THC metabolite. N.M. Stat. §26-2C-34.

Medical Psilocybin Act

Senate Bill 219, the Medical Psilocybin Act, is now in effect. This legislation establishes a regulated program for the medical use of psilocybin, a naturally occurring psychedelic compound, to treat qualified medical conditions such as major treatment-resistant depression, PTSD, substance use disorders, and end-of-life care. The program is set to be fully implemented by

December 31, 2027. Senate Bill 219. There is no language in the law that requires employers to accommodate use while at work. The law also does not create a private right of action.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

NEW YORK

NEW YORK

New York does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

New York's medical marijuana law was expanded via the passage of the Marijuana Regulation and Taxation Act.

Employees who use medical cannabis shall be afforded the same rights, procedures and protections that are available and applicable to injured workers under the workers' compensation law, or any rules or regulations promulgated thereunder, when such injured workers are prescribed medications that may prohibit, restrict, or require the modification of the performance of their duties.

Employers should review the below content regarding guidance published by the New York Department of Labor.

Statewide Recreational Marijuana Law

The New York Department of Labor recently published guidance regarding New York's Marijuana Regulation and Taxation Act (MRTA). Intended to address the recreational use of marijuana by adults, the guidance provides several FAQs related to what employers may – and may not – do in terms of regulating marijuana and the workplace.

As outlined in the guidance, "[e]mployers are prohibited from discriminating against employees based on the employee's use of cannabis outside of the workplace, outside of work hours, and without use of the employer's equipment or property."

Permitted Employer Actions

Employers may take action in select circumstances including:

- An employer is/was required to take such action by state or federal statute, regulation, or ordinance, or other state or federal governmental mandate.
- The employer would be in violation of federal law.
- The employer would lose a federal contract or federal funding.

- The employee, while working, manifests specific articulable symptoms of cannabis impairment that decrease or lessen the employee's performance of the employee's tasks or duties.
- The employee, while working, manifests specific articulable symptoms of cannabis impairment that interfere with the employer's obligation to provide a safe and healthy workplace as required by state and federal workplace safety laws.

Symptoms of Cannabis Impairment

With respect to the "specific articulable symptoms of cannabis impairment", the FAQs acknowledge that no complete list exists. Instead, they are "objectively observable indications that the employee's performance of the duties of the position are decreased or lessened." The FAQs further outline that employers may not use drug testing as a basis to determine if an employee was impaired. Further, the smell of cannabis on its own is also not a sign of impairment.

Workplace Prohibitions

Employers are allowed to prohibit the use of cannabis during "work hours" which includes meal or break periods (whether paid or unpaid). This includes periods of time where an employee is on-call. Employers may also prohibit employees from bringing cannabis into the workplace. Interestingly, the FAQs make a distinction that a remote environment would not be considered a "worksite"; however, employers may still take action if an employee is exhibiting signs of impairment during working hours.

Employers may not prohibit cannabis use outside of the workplace and cannot require that employees promise or agree to not use cannabis as a condition of employment.

Drug Testing

The NY DOL clearly states that employers are not allowed to test for cannabis unless permitted to do so under the provisions of Labor Law Section 201-D(4-a) or other applicable laws. The FAQs note that employers can drug test an employee if federal or state law requires drug testing or makes it a mandatory requirement of the position (i.e., mandatory drug testing for drivers of commercial motor vehicles).

Impacted employers are encouraged to consult with qualified legal counsel to review their workplace drug policies including their drug testing procedures in light of this prescriptive guidance.

Local Considerations

The New York City Council banned pre-employment marijuana tests. The law makes it an unlawful discriminatory practice for an employer, labor organization, employment agency or agent to require a prospective employee to complete a drug test designed to detect the presence of marijuana or tetrahydrocannabinols (also known as THC) as a condition of employment. This law does not prevent marijuana drug testing on current employees. Employers should review the full text of the law for exemptions. Int. No. 1445-A. The New York City Commission on Human

Rights has also published FAQs with respect to marijuana testing in employment. https://www.nyc.gov/assets/cchr/downloads/pdf/FAQ_Preemployment_Testing_Marijuana_May8_2020.pdf.

A class action complaint was filed in March 2021 alleging the employer requires candidates to submit to pre-employment marijuana drug tests in violation of this law. Namely, that the position he would have filled did not mention any mandatory requirement to operate machinery or heavy equipment and thus no permissible exemption existed to allow for a pre-employment marijuana drug test.

NORTH CAROLINA

NORTH CAROLINA

North Carolina has a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

There are certain procedures employers must take when screening employees (although employers are not required to conduct controlled substance exams). A preliminary screening procedure of prospective employees must utilize a single-use test device, and a screening test of samples for current employees may only be performed by an approved laboratory. If a screening test for a prospective employee produces a positive result, an approved laboratory must confirm that result by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method, unless the examinee signs a written waiver at the time or after they receive the preliminary test result. All screening tests for current employees that produce a positive result must also be confirmed by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method. N.C. Gen. Stat. §95-232.

It is also an unlawful employment practice for an employer to refuse to hire a prospective employee, discharge or otherwise discriminate against an employee with respect to compensation, terms, conditions or privileges of employment because such prospective employee or employee engages in the lawful use of lawful products if the activity occurs off the employer's premises during nonworking hours and does not adversely affect the employee's job performance or the person's ability to properly fulfill the responsibilities of his or her position, or the safety of other employees. Although, an employer may still discharge, discipline, or take any action against an employee because of the employee's failure to comply with the requirements of the employer's substance abuse prevention program or the recommendations of substance abuse prevention counselors employed or retained by the employer. N.C. Gen. Stat. §95-28.2.

Statewide Medical Marijuana Law

None.

Statewide Recreational Marijuana Law

None. However, in a North Carolina case, an employee was fired from her job for using an over-the-counter CBD oil after a drug test revealed THC in her system. The lawsuit claims wrongful termination, as the low levels of THC did not meet the threshold level of being impaired under the Department of Transportation regulations, and thus, the employee tested negative for purpose of driving a commercial vehicle and was not impaired. The court held that CBD oil is a

legal product under North Carolina law, even if it contains small amounts of THC that would otherwise be considered a controlled substance.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

NORTH DAKOTA

NORTH DAKOTA

North Dakota does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None. However, any time an employer requires an employee or prospective employee to take a medical exam (including drug or alcohol testing) the employer must pay for any required drug and/or alcohol testing. N.D.C.C. §34-01-15.

Statewide Medical Marijuana Law

In North Dakota, employers may still discipline an employee for possessing or consuming usable marijuana in the workplace or for working while under the influence of marijuana. N.D.C.C. §19-24.1-34. The law was amended in April 2023 to include "or working with marijuana in the employee's system." SB 2388.

Statewide Recreational Marijuana Law

None. In the 2022 election, North Dakota voters rejected Measure 2 which would have legalized recreational marijuana.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

OHIO

Ohio does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None. However, Ohio has a statute regarding unlawful discriminatory practices, which specifically provides that employers are not prohibited from adopting or administering reasonable policies or procedures (including testing for the illegal use of a controlled substance) that are designed to ensure that an individual is not engaging in the illegal use of a controlled substance. Furthermore, employers are not prohibited from requiring employees to not be under the influence of alcohol or engaged in the illegal use of a controlled substance at the workplace. Ohio Rev. Code §4112.02.

Statewide Medical Marijuana Law

Under Ohio's medical marijuana law, employers are not required to permit or accommodate an employee's use, possession or distribution of medical marijuana. Employers may still refuse to hire, discipline, or take an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's use, possession, or distribution of medical marijuana. A person who is discharged from employment because of that person's use of medical marijuana is considered to have been discharged for just cause for purposes of unemployment if the person's use of medical marijuana was in violation of an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of medical marijuana. Nothing in the Ohio medical marijuana law prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy or program, or a zero-tolerance drug policy. Nothing in the law permits a person to commence a cause of action against an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana. Ohio Rev Code §3796.28.

Statewide Recreational Marijuana Law

Recreational marijuana is legal in Ohio as of December 7, 2023, following passage of Ohio Issue 2 on the 2023 election ballot. However, the state legislature is still working through legislation to provide further guardrails around recreational marijuana. At this time, the law does not: require employers to permit or accommodate use, possession or distribution of marijuana, prohibit employers from refusing to hire, discharging, disciplining, or otherwise taking adverse employment actions against an individual with respect to marijuana use, possession or distribution, prohibit employers from establishing and enforcing a drug testing policy, drug-free

workplace policy or zero-tolerance drug policy, or permit individuals to sue employers for taking any of the preceding actions. The law also does not interfere with any federal restrictions on employment including those mandated by the DOT. Ohio Rev Code §3780.35.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

OKLAHOMA

OKLAHOMA

Oklahoma has a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

The Standards for Workplace Drug and Alcohol Testing Act oversees drug and alcohol testing in Oklahoma. Employers who choose to conduct drug or alcohol testing may only request or require an applicant or employee to undergo testing under the following circumstances: applicant and transfer/reassignment testing; for-cause testing; post-accident testing; random testing; scheduled, fitness-for-duty, return from leave and other periodic testing; and post-rehabilitation testing. Employers should review the law for specific requirements related to each testing purpose. 40 OK Stat §40-554.

Before an employer requests or requires and applicant or employee to undergo drug or alcohol testing it must adopt a written policy setting forth the specifics of its drug or alcohol testing program, such as which applicants and employees are subject to testing, confidentiality requirements, and available appeal procedures. An employer who implements a drug or alcohol testing policy or changes its policy, shall provide at least ten (10) days' notice to its employees and shall provide a copy of its policy to each applicant upon his or her acceptance of employment. 40 OK Stat §40-555.

Drug or alcohol testing required by and conducted pursuant to federal law or regulation shall be exempt from the provisions of the Standards for Workplace Drug and Alcohol Testing Act and any promulgated rules. 40 OK Stat §40-553.

Any drug or alcohol testing by an employer is deemed work time for purposes of compensation and benefits for current employees and the employer is responsible for paying all costs of drug and alcohol testing. However, if any employee or applicant requests a confirmation test of a sample within twenty-four (24) hours of receiving notice of a positive test in order to challenge the results of a positive test, the employee or applicant shall pay all costs of the confirmation test, unless the confirmation test reverses the findings of the challenged positive test. In such case, the employer shall reimburse the individual for the costs of the confirmation test. 40 OK Stat §40-556.

An employer's policy must state the disciplinary actions that may be taken upon a refusal to undergo a drug or alcohol test or for a positive test for the presence of drugs or alcohol. An employer may take disciplinary action, up to and including discharge, against an employee who refuses to undergo drug or alcohol testing or who tests positive for the presence of drugs or alcohol. 40 OK Stat §40-562.

Statewide Medical Marijuana Law

Unless a failure to do so would cause an employer the potential to lose a monetary or licensing-related benefit under federal law, an employer may not discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person based upon the status of the person as a licensed medical marijuana patient. However, employers may take action against a licensed medical marijuana patient if the licensed medical marijuana patient uses or possesses marijuana while in his or her place of employment or during the hours of employment. Employers may not take action against the licensed medical marijuana patient solely based upon the status of an employee as a licensed medical marijuana patient or the results of a drug test showing positive for marijuana. 63 OK Stat §63-425.

Although employers may not refuse to hire, discipline, discharge or otherwise penalize an applicant or employee solely on the basis of a positive drug test result for marijuana, this does not apply to: (i) an applicant or employee who is not in possession of a valid medical marijuana license; (ii) a licensee who possesses, consumes or is under the influence of medical marijuana while at the place of employment or during the fulfillment of employment obligations; (iii) positions involving safety-sensitive job duties. 63 OK Stat §63-427.8.

Employers are not required to permit or accommodate the use of medical marijuana on the property or premises of employment or during hours of employment, and employers are not prevented from having written policies regarding drug testing and impairment (in accordance with the Oklahoma Standards for Workplace Drug and Alcohol Testing Act). 63 OK Stat §63-427.8.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

OREGON

OREGON

Oregon does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None. However, employers may not, as a condition for employment or continuation of employment, require any employee to take a breathalyzer test (unless the employee consents). Yet, if the employer has reasonable grounds to believe that the individual is under the influence of intoxicating liquor, then the employer may require, as a condition for employment or continuation of employment, the administration of a blood alcohol content test by a third party or a breathalyzer test. The employer must not require the employee to pay the cost of administering such test. Or. Rev. Stat. §659.840.

Statewide Medical Marijuana Law

Employers are not required to accommodate the medical use of marijuana in the workplace. Or. Rev. Stat. §475C.780.

Statewide Recreational Marijuana Law

Oregon's law regulating recreational marijuana does not specifically set forth any employment-related provisions.

In the 2020 election, Oregon voters passed Measure 109 which legalized psilocybin-producing mushrooms and fungi. The Oregon Psilocybin Services Section will begin accepting applications for licensure on January 2, 2023. Until then, the Oregon Psilocybin Services Section is in a development period, working to build the nation's first regulatory framework for psilocybin services. For more information, visit: https://www.oregon.gov/oha/ph/preventionwellness/pages/oregon-psilocybin-services.aspx.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

PENNSYLVANIA

PENNSYLVANIA

Pennsylvania does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

Pennsylvania's Medical Marijuana Act provides that employers may not discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of the employee's status as an individual who is certified to use medical marijuana. However, employers are not required to make any accommodation for the use of medical marijuana on the property or premises of any place of employment. Employers may still discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position. Medical Marijuana Act, Act 16 of 2016.

In addition, employers may prohibit employees (who are medical marijuana patients) from performing any task or duty which the employer deems life-threatening to the employee or other employees while under the influence of marijuana, or could result in a public health or safety risk while under the influence of medical marijuana, neither of which are considered an adverse employment decision. Medical Marijuana Act, Act 16 of 2016.

There is growing litigation over the use of medical marijuana and employment impacts. In one recent example, a complaint was filed in the U.S. District Court for the Eastern District of Pennsylvania alleging a senior living retirement community violated the state's Medical Marijuana Act by rescinding the conditional employment offer following a positive drug test for marijuana.

In 2021, the Superior Court of Pennsylvania determined the Medical Marijuana Act allows for a private right of action (i.e., the individual may sue the employer) based on adverse action taken with respect to the individual's status as a certified medical marijuana user.

Statewide Recreational Marijuana Law

None.

Local Considerations

Philadelphia

In Philadelphia it is an unlawful employment practice for employers to require prospective employees to submit to testing for the presence of marijuana. However, this does not apply to

certain positions, including police officer and other law enforcement positions; any position requiring a commercial driver's license; any position requiring the supervision or care of children, medical patients, disabled or other vulnerable individuals; and any position in which the employee could significantly impact the health or safety of other employees or the public. This prohibition also does not apply to drug testing required pursuant to (i) any federal law that requires drug testing of prospective employees for purposes of safety or security; (ii) any contract between the federal government and an employer or any grant of financial assistance from the federal government to an employer that requires drug testing of prospective employees as a condition of receiving the contract or grant; or (iii) applicants whose prospective employer is a party to a valid collective bargaining agreement that specifically addresses the pre-employment drug testing of such applicants. §9-4702.

Pittsburgh

Ordinance 2024-0705 makes medical marijuana patients a protected class. The law protects both job applicants and current employees who are medical marijuana patients. Employers are prohibited from discriminating in hiring or employment because of the individual's lawful status as a medical marijuana patient, including by requiring pre-employment testing for marijuana and conducting any such testing during the course of employment.

There are a number of exceptions under the Ordinance that employers are encouraged to review in full with their qualified legal counsel. Notably, the Ordinance does not apply to any position that is subject to drug testing under the US Department of Transportation or Pennsylvania Department of Transportation regulations. The Ordinance also does not require an employer to commit any act that would cause it to violate state or federal law. The Ordinance also cites the Pennsylvania Medical Marijuana Act which prohibits medical marijuana patients from performing certain tasks and duties such as (but not limited to) any tasks any employer may deem life-threatening if performed while under the influence of medical marijuana.

The Ordinance allows employers to take disciplinary action against an employee if the employee is under the influence of medical marijuana in the workplace or is working while under the influence of medical marijuana, where the employee's conduct falls below the standard of care normally accepted for that position. Employers are not required to allow the use of medical marijuana on the premises or property of the workplace.

Employers are still able to test for the illegal use of controlled substances. Further, the Ordinance does not apply to: (i) for cause testing when supervisors have reasonable cause to suspect an employee of being under the influence at work, or (ii) post-accident testing.

RHODE ISLAND

RHODE ISLAND

Rhode Island has a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

In Rhode Island, employers may not request, require, or subject any employee to submit a sample of his or her urine, blood, or other bodily fluid or tissue for testing as a condition of continued employment unless that test is administered in accordance with Rhode Island's applicable labor laws.

Employers may require employees to submit to a drug test if: (i) the employer has reasonable grounds to believe based on specific aspects of the employee's job performance and specific contemporaneous documented observations, concerning the employee's appearance, behavior or speech that the employee may be under the influence of a controlled substance, which may be impairing his or her ability to perform his or her job; (ii) the employee provides the test sample in private, outside the presence of any person; (iii) employees testing positive are not terminated on that basis, but are instead referred to a substance abuse professional for assistance; provided, that additional testing may be required by the employer in accordance with such referral, and an employee whose testing indicates any continued use of controlled substances despite treatment may be terminated; (iv) positive tests are confirmed by a federally certified laboratory by means of gas chromatography/mass spectrometry or technology recognized as being at least as scientifically accurate; (v) the employer provides the test to the employee, at the employer's expense, the opportunity to have the sample tested or evaluated by an independent testing facility and so advises the employee; (vi) the employer provides the test to the employee with a reasonable opportunity to rebut or explain the results; (vii) the employer has promulgated a drug abuse prevention policy which complies with the requirements of Rhode Island's applicable labor laws; and (viii) the employer keeps the results of any test confidential, except for disclosing the results of a "positive" test only to other employees with a job-related need to know, and to defend against any legal action brought by the employee against the employer. R.I. Gen. Laws §28-6.5-1.

Subject to certain exceptions, an employer may require a job applicant to submit to testing of his or her blood, urine or any bodily fluid or tissue if: (i) the job applicant has been given an offer of employment conditioned on the applicant's receiving a negative test; (ii) the applicant provides the test sample in private, outside the presence of any person; and (iii) positive tests are confirmed by a federal certified laboratory by means of gas chromatography/mass spectrometry or technology recognized as being at least as scientifically accurate. R.I. Gen. Laws 28-6.5-2.

In *Colpitts v. W.B. Mason Co., Inc.*, the Supreme Court of Rhode Island issued an opinion finding an employer was justified in terminating a medical marijuana user following his refusal to take a

drug test. The employee was working as a "supply driver" and after an on-site accident, the employer required him to undergo a drug test, which he refused. The court determined that Rhode Island's drug testing law does not require actual knowledge that the employee is under the influence or that there are specific symptoms displayed. Instead, the law only requires that there are reasonable grounds for an employer to believe the individual is under the influence of a controlled substance.

Statewide Medical Marijuana Law

In Rhode Island, employers cannot refuse to employ or penalize a person based solely on the person's status as a qualified medical marijuana patient, except to the extent employer action is taken with respect to the person's: (i) use or possession of marijuana or being under the influence of marijuana in the workplace; (ii) undertaking a task under the influence of marijuana when doing so would constitute negligence or professional malpractice or jeopardize workplace safety; (iii) operation, navigation, or actual physical control of any motor vehicle or other transport vehicle, aircraft, motorboat, machinery or equipment, or firearms while under the influence of marijuana; or (iv) violation of employment conditions pursuant to the terms of a collective bargaining agreement; or where the employer is a federal contractor or subject to federal law such that failure of the employer to take such action against the employee would cause the employer to lose a monetary or licensing related benefit. R.I. Gen. Laws §21-28.6-4.

In *Callaghan v. Darlington Fabrics Corp.*, an applicant applied for a paid internship and disclosed that she had a medical marijuana card and would not pass the employer's required pre-employment drug test. The employer's policy prohibited only the use of drugs on company property. The court held that employers cannot refuse to hire a medical marijuana cardholder, even if the individual admittedly would not pass the employer's pre-employment drug test required of all applicants, as the court found the state's Hawkins-Slater Medical Marijuana Act was designed to protect a medical marijuana cardholder's actual use of marijuana for medical purposes.

Statewide Recreational Marijuana Law

Rhode Island recently legalized recreational marijuana via the Rhode Island Cannabis Act (the "Act"). Under the Act, employers are not required to accommodate the medical use of marijuana in the workplace or the use or possession of cannabis, being under the influence of cannabis, in the workplace or the use of cannabis in any other location while an employee is performing work (including remote work). Employers may still implement drug use policies which prohibit the use or possession of cannabis in the workplace or while performing work from being under the influence of cannabis, provided that unless such use is prohibited pursuant to the terms of a collective bargaining agreement, an employer cannot fire or take disciplinary action against an employee solely for an employee's private, lawful use of cannabis outside the workplace and as long as the employee does not work while under the influence of cannabis (subject to certain exceptions, such as if the employee is employed in a hazardous or dangerous job). In addition, employers may refuse to hire, discharge, discipline, or otherwise take an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of

employment because of that person's violation of a workplace drug policy or because that person was working while under the influence of cannabis. R.I. Gen. Laws §21-28.11-429.

The Act will also allow for the automatic expungement of certain marijuana violations and convictions, which all eligible records will be expunged before July 1, 2024.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

SOUTH CAROLINA

SOUTH CAROLINA

South Carolina does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

None.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

SOUTH DAKOTA

SOUTH DAKOTA

South Dakota does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None. As noted by the South Dakota Division of Human Rights: "Anyone who uses drugs illegally is not protected by South Dakota employment discrimination laws. Such a person may be denied employment or fired on the basis of illegal drug use. Employers are not prohibited by South Dakota law from testing applicants or employees for current illegal drug use or from making employment decisions based on verifiable test results. A test for illegal drug use is not considered a medical examination under South Dakota law." https://dlr.sd.gov/human_rights/coverage.aspx.

Statewide Medical Marijuana Law

A registered qualifying patient who uses cannabis for a medical purpose is afforded all the same rights under state and local law, as the person would be afforded if the person were solely prescribed a pharmaceutical medication, as it pertains to any interaction with a person's employer, drug testing by a person's employer, or drug testing required by any state or local law, agency, or government official (unless it conflicts with an employer's obligations under federal law or to the extent that it would disqualify an employer from a monetary or licensing-related benefit under federal law). SD Codified Laws §34-20G-22.

In addition, employers are not required to allow the ingestion, possession, transfer, display, or transportation of cannabis in the workplace or to allow any employee to work while under the influence of cannabis. Employers may also establish and enforce a drug-free workplace policy that may include a drug testing program that complies with state and federal law. SD Codified Laws §34-20G-24. Employers may discipline an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis. SD Codified Laws §34-20G-28.

Statewide Recreational Marijuana Law

None. In the 2022 election, South Dakota voters defeated Measure 27 which would have legalized recreational marijuana.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

TENNESSEE

TENNESSEE

Tennessee does not have a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None. However, employers may implement a drug-free workplace program in exchange for a discount on workers' compensation insurance premiums. Such a program is regulated by Tenn. Code Ann. §50-9-101 through §50-9-116.

Statewide Medical Marijuana Law

None. However, licensed physicians can recommend cannabis oil that contains less than 0.9% THC, but only to treat certain illnesses or disorders. This limited law does not set forth any employment related provisions. Tenn. Code Ann. §39-17-402.

In *Hamric v. City of Murfreesboro*, an employee (who took CBD products for medical conditions) failed a drug test due to the presence of THC. She was advised she would be fired because of the test so she resigned. She filed suit alleging that she was discriminated against on the basis of her disability in violation of the Americans with Disabilities Act as well as the Tennessee Disability Act. The court dismissed the discriminatory discharge claim because none of the employer's decision-makers were aware that the employee was disabled. Her failure-to-accommodate claim also was dismissed because she failed to provide evidence that her request to revise the drug policy was necessary to enable her to perform her essential job functions.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

TEXAS

TEXAS

Texas does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None. The Texas Workforce Commission has published an article regarding drug testing in the workplace: https://www.twc.texas.gov/news/efte/drug_testing_in_the_workplace.html.

Statewide Medical Marijuana Law

The Texas Compassionate-Use Act regulates the medical use of low-THC cannabis, but it does not set forth any employment-related provisions.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers. Several cities have passed or are considering various local marijuana decriminalization ordinances.

UTAH

Utah has a statewide law that regulates employment-related drug and alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

If an employer tests an employee or prospective employee for the presence of drugs or alcohol as a condition of hiring or continued employment, the employer is protected from liability if the employer complies with Utah's law on employment-related drug and alcohol testing. However, employers and management in general must submit to testing themselves on a periodic basis. Utah Code Ann. §34-38-3.

Any drug or alcohol testing by an employer must occur during or immediately after the regular work period of current employees and is deemed work time for purposes of compensation and benefits for current employees. An employer is responsible for paying all costs of testing for drugs or alcohol required by the employer, including the cost of transportation if the testing of a current employee is conducted at a place other than the workplace. Utah Code Ann. §34-38-5.

Testing or retesting for the presence of drugs or alcohol by an employer must be carried out within the terms of a written policy which has been distributed to employees and is available for review by prospective employees. Within the terms of an employer's written policy, an employer may require the collection and testing of samples for the following purposes: investigation of possible individual employee impairment; investigation of accidents in the workplace or incidents of workplace theft; maintenance of safety for employees or the general public; or maintenance of productivity, quality of products or services, or security of property or information. However, the collection and testing of samples does not need to be limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee. Utah Code Ann. §34-38-7.

Employers may use a test result or a refusal to test as the basis for disciplinary or rehabilitative actions including suspension, termination, refusal to hire or other disciplinary measures. Utah Code Ann. §34-38-8.

The law notes that an employee or prospective employee whose drug or alcohol test result is confirmed as positive in accordance with this chapter may not, because of those results alone, be defined as a person with a disability under state law. Utah Code Ann. §34-38-14. The law also addresses topics such as causes of action against employers including for inaccurate test results and confidentiality requirements.

Statewide Medical Marijuana Law

Utah's Medical Cannabis Act does not require a private employer to accommodate the use of medical cannabis and private employers may have policies restricting the use of medical cannabis by applicants or employees. Utah Code Ann. §26-61a-111.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

VERMONT

VERMONT

Vermont has a statewide law that regulates employment-related drug testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

An employer cannot as a condition of employment: (i) request or require that an applicant take a drug test; (ii) administer or attempt to administer a drug test to an applicant; or (iii) request or require that an applicant consent to a practice prohibited under Vermont's applicable employment-related drug testing law. However, an employer may require an applicant to submit to a drug test only if: (i) the applicant is given a conditional offer of employment (conditioned on the applicant receiving a negative test result), (ii) receives written notice of the drug testing procedure and a list of the drugs to be tested (the notice must state that therapeutic levels of medically-prescribed drugs tested will not be reported), and (iii) the drug test is administered pursuant to Vermont's applicable employment-related drug testing law. 21 V.S.A. §512.

In general, an employer may also not, as a condition of employment, promotion, change of status of employment, or as an expressed or implied condition of a benefit/privilege of employment: (i) request or require that an employee take a drug test; (ii) administer or attempt to administer a drug test to an employee; or (iii) request or require that an employee consent to a practice prohibited under Vermont's applicable employment-related drug testing law. 21 V.S.A. §513.

In addition, an employer may not request, require, or conduct random or company-wide drug tests (except when such testing is required by federal law). However, an employer may require an employee to submit to a drug test if: (i) the employer has probable cause to believe the employee is using or is under the influence of a drug on the job; (ii) the employer has available for the employee tested a bona fide rehabilitation program for alcohol or drug abuse and such program is provided by the employer or is available to the extent provided by a policy of health insurance or under contract by a nonprofit hospital service corporation; (iii) the employee may not be terminated if the test result is positive and the employee agrees to participate in and then successfully completes the employee assistance program, but the employee may be suspended only for the period of time necessary to complete the program (in no event longer than three months); however, the employee may be terminated if, after completion of an employee assistance program, the employer subsequently administers a drug test and the test result is positive, and (iv) the drug test is administered in accordance with Vermont's applicable employment-related drug testing law. 21 V.S.A. §513.

Employers should also be sure to provide all persons tested with a written policy that, among other things, identifies the circumstances under which persons may be required to submit to

drug tests, the particular test procedures, the drugs that will be screened, a statement that over-the-counter medications and other substances may result in a positive test and the consequences of a positive test result. 21 V.S.A. §514.

In the event of a positive test, the medical review officer shall contact the individual and explain the results including why the results may not be accurate. The medical review officer shall provide any applicant or employee who has a positive test result with an opportunity to retest a portion of the sample at an independent laboratory at the expense of the person tested and shall consider the results of the retest. 21 V.S.A. §515.

Employers may still prohibit the nonprescribed use of drugs or alcohol during work hours, or restrict an employer's authority to discipline, suspend, or dismiss an employee for being under the influence of drugs or alcohol during work hours (except as otherwise limited under the law). 21 V.S.A. §517.

Statewide Medical Marijuana Law

Vermont's medical marijuana law does not include provisions specific to private employers.

Statewide Recreational Marijuana Law

Vermont's recreational marijuana law does not: (i) require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace; (ii) prevent an employer from adopting a policy that prohibits the use of marijuana in the workplace; (iii) prohibit the employer from creating a cause of action against an employer that discharges an employee for violating a policy that restricts or prohibits the use of marijuana by employees; or (iv) prevent an employer from prohibiting or otherwise regulating the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana on the employer's premises. 18 V.S.A. §4230a.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

VIRGINIA

VIRGINIA

Virginia does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

Virginia has a law with respect to the medicinal use of cannabis oil, which provides that employers must not discharge, discipline, or discriminate against an employee for the employee's lawful use of cannabis oil pursuant to a valid written certification issued by a practitioner for the treatment or to eliminate the symptoms of the employee's diagnosed condition or disease. However, an employer is not: (i) restricted from taking adverse employment action for any work impairment caused by the use of cannabis oil or from prohibit possession during work hours; or (ii) required to commit any act that would cause the employer to be in violation of federal law or that would result in the loss of a federal contract or federal funding. In addition, any defense industrial base sector employer or prospective employer is not required to hire or retain any applicant or employee who tests positive for THC in excess of 50 ng/ml for a urine test or 10 pg/mg for a hair test. Va. Code Ann. §40.1-27.4.

Statewide Recreational Marijuana Law

Virginia's Cannabis Control Act does not contain any provisions specific to private employers.

Employers are prohibited from inquiring into – in an application, interview or otherwise – any arrest, criminal charge or conviction that relates to a violation of §18.2-250.1, i.e., simple possession of marijuana, or § 18.2-248.1 which includes the sale, gift, distribution or possession with intent to sell, give or distribute marijuana. Va. Code Ann. §19.2-389.3.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

WASHINGTON

WASHINGTON

Washington does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None. However, effective January 1, 2024, it will be an unlawful practice for employers to discriminate against an individual in the initial hiring stage if the discrimination is based on: (i) the person's use of cannabis off the job and away from the workplace, or (ii) an employer-required drug test that found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids. Employers may make decisions based on "scientifically valid drug screening conducted through methods that do not screen for nonpsychoactive cannabis metabolites."

Employers may maintain drug and alcohol-free workplaces. The law also does not infringe on any rights or obligations of employers required by federal law or regulation. Further, the law does not apply to testing done beyond the pre-employment stage such as post-accident or reasonable suspicion testing. There are several exemptions under the law including safety sensitive positions. SB 5123.

Statewide Medical Marijuana Law

Washington's medical marijuana law does not require any accommodation of on-site medical use of cannabis in any place of employment. Employers may still establish drug-free work policies, and nothing requires an accommodation for the medical use of cannabis if an employer has a drug-free workplace. RCW 69.51A.060.

Statewide Recreational Marijuana Law

Washington's law regulating recreational marijuana does not specifically set forth any employment-related provisions, and it does not alter existing Washington employment law or create new employee rights.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

WEST VIRGINIA

WEST VIRGINIA

West Virginia has a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

Employers may test employees or prospective employees for the presence of drugs or alcohol, in accordance with West Virginia's Safer Workplace Act. W. Va. Code §21-3E-4.

Any drug or alcohol testing by an employer of employees shall occur during, or immediately before or after, a regular work period. Testing by an employer is worked time for the purposes of compensation and benefits for current employees. An employer shall pay all actual costs for drug and/or alcohol testing required by the employer of employees and prospective employees. An employer is required to provide transportation or to pay reasonable transportation costs to current employees if their required tests are conducted at a location other than the employee's normal work site(s). W. Va. Code §21-3E-6.

The law governs the collection of samples and allows for an opportunity for the employee, or prospective employee, to voluntarily provide notification of any information which may be considered as relevant to the test, including, but not limited to, identification of currently or recently used prescriptions or nonprescription drugs, or other relevant medical information. If an individual wishes to challenge the results, the individual has the right to have the split sample tested by another laboratory. Such confirmation test cost shall be the responsibility of the individual. W. Va. Code §21-3E-7.

Employers must have a written policy governing the testing or retesting that is made available to every employee subject to testing and is available for review by prospective employees. If the employer offers any benefits such as counseling, employee assistance or rehabilitation, the employer must provide that information to employees when requested and/or appropriate (although employers are not required to offer any such benefits). Employers may require collection and testing for a variety of reasons including, but not limited to, investigation of workplace accidents, maintenance of productivity, quality or security of products or information, or the deterrence and/or detection of possible illicit drug use, possession or sale. The collection and testing of samples shall be conducted in accordance with the law and need not be limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee. W. Va. Code §21-3E-8.

Employers may use positive drug or alcohol test results, or the refusal of a prospective or current employee to provide a testing sample, as a valid basis for disciplinary and/or rehabilitative actions, which may include, among other actions, the following: (i) a requirement that the employee enroll in an employer-provided or approved rehabilitation, treatment and/or counseling program, which may include additional drug and/or alcohol testing, participation in which may be a condition of continued employment, and the costs of which may or may not be covered by the employer's health plan or policies; (ii) suspension of the employee, with or without pay, for a

designated period of time; (iii) termination of employment; (iv) refusal to hire a prospective employee; and/or (v) other adverse employment action in conformance with the employer's written policy and procedures, including any relevant collective bargaining agreement provisions. W. Va. Code §21-3E-9.

The law also addresses items such as "sensitive" positions, protection from liability, causes of action against an employer, defamation and confidentiality. Employers are also not required to implement a testing policy.

Statewide Medical Marijuana Law

West Virginia's Medical Cannabis Act provides that no employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of the employee's status as an individual who is certified to use medical cannabis. However, employers are not required to accommodate the use of medical cannabis on the property or premises of any place of employment, and employers may still discipline an employee for being under the influence of medical cannabis in the workplace or for working while under the influence of medical cannabis when the employee's conduct falls below the standard of care normally accepted for that position. Nothing in the Medical Cannabis Act requires an employer to commit any act that would put the employer or any person acting on its behalf in violation of federal law. W. Va. Code §16A-15-4.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

WISCONSIN

WISCONSIN

Wisconsin does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

None. However, Wisconsin has a limited law (Wisconsin Act 68) with respect to low THC CBD for certain patients, which does not set forth any employment-related provisions.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

WYOMING

WYOMING

Wyoming does not have a statewide law that regulates employment-related drug and/or alcohol testing. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

State Drug and/or Alcohol Testing Law

None.

Statewide Medical Marijuana Law

None.

Statewide Recreational Marijuana Law

None.

Local Considerations

There are no known local laws regulating medicinal or recreational use of marijuana applicable to private employers.

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