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# **2017 LEGAL UPDATE:**

## **Recent Developments Impacting Workplace Drug Testing**

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# 2016-2017 State Marijuana Legislation

Since August 2016, 4 new medical marijuana states and 4 new recreational marijuana states

- On November 8, 2016:
  - 3 states passed medical marijuana by voter initiative
    - Arkansas, Florida, North Dakota
  - 4 states passed recreational marijuana by voter initiative
    - California, Nevada, Maine, Massachusetts
    - Only failed in Arizona
- In 2017:
  - 1 state legislature passed medical marijuana (West Virginia)
  - 1 state legislature passed recreational marijuana (Vermont) but vetoed by Governor



# 2016-2017 State Marijuana Legislation

## Medical Marijuana

- Passed legislation: 6 states
  - **Ohio and Pennsylvania (2016)**
  - Arkansas (Nov. 8, 2016)
  - Florida (Nov. 8, 2016)
  - North Dakota (Nov. 8, 2016)
  - West Virginia (2017)
- 2017 introduced legislation: at least 16 states

## Recreational Marijuana

- Passed legislation: 4 states
  - California (Nov. 8, 2016)
  - Maine (Nov. 8, 2016)
  - Massachusetts (Nov. 8, 2016)
  - Nevada (Nov. 8, 2016)
  - \*Vermont passed but vetoed
- 2017 Introduced legislation: at least 22 states

# State Marijuana Laws

30\* states + D.C. + 2 U.S. territories (Guam and Puerto Rico) have comprehensive medical marijuana laws

- \*Louisiana

8 states + D.C. have recreational marijuana laws

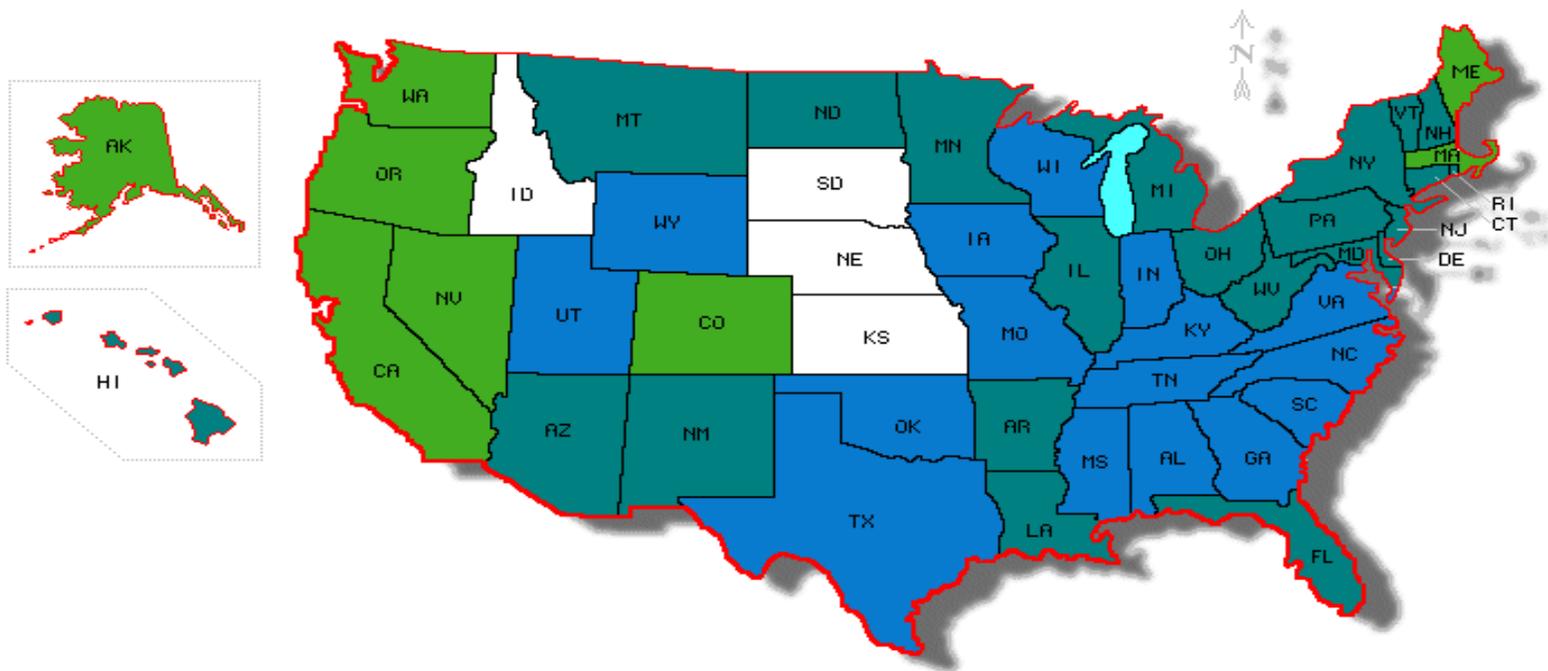
- Laws regulate marijuana like alcohol and tobacco, allows adults 21+ to use and possess marijuana
- All states with recreational marijuana also have comprehensive medical marijuana laws

16 states have low THC/high CBD laws

- Laws allow use of low THC/high CBD products in limited situations or as legal defense

# Recreational, Medical, and CBD states

- - Recreational
- - Medical
- - CBD



# Marijuana Today: Federal Law—Still Prohibited

- While states are passing laws allowing medical and recreational marijuana:
  - Marijuana is still illegal under Federal Law
  - Marijuana is still classified as Schedule I drug by DEA
    - No currently accepted medical use in treatment, lack of accepted safety for use under medical supervision, and high potential for abuse
    - August 2016: DEA denied petition to reschedule marijuana but increased access for research
  - Medical Marijuana is NOT a legitimate medical explanation under DOT drug testing regulations



# Marijuana Today: Federal Law

- January 2017: new administration
- Attorney General Jeff Sessions
  - February 2017: warning on state marijuana legalization
  - May 2017: letter urging Congress not to renew Rohrabacher-Farr
  - Creation of task force
- States with recreational marijuana laws seeking to protect marijuana laws
  - Oregon: passed legislation protecting identity of marijuana consumers from federal agents
  - California: proposed legislation that would prohibit local law enforcement from coordinating with the DEA
  - Colorado: proposed legislation that would allow recreational marijuana business to re-classify marijuana as medical if there is a change in federal enforcement



# Marijuana Today: Federal Law

- February 2017: creation of first Congressional Cannabis Caucus
  - Bi-partisan coalition dedicated to working on legislation related to marijuana
- So far, more than a dozen bills introduced regarding marijuana
- Rohrabacher-Farr Congressional rider renewed through December 2017
  - Prohibits DOJ from using funds to interfere with medical marijuana

# State Medical Marijuana Laws

- Alaska (1998)
- Arizona (2010)
- **Arkansas (2016)**
- California (1996)
- Colorado (2000)
- Connecticut (2012)
- Delaware (2011)
- **Florida (2016)**
- Hawaii (2000)
- Illinois (2013)
- Louisiana (2015)
- Maine (1999)
- Maryland (2014)
- Massachusetts (2012)
- Michigan (2008)
- Minnesota (2014)
- Montana (2004)
- Nevada (2000)
- New Hampshire (2013)
- New Jersey (2010)
- New Mexico (2007)
- New York (2014)
- **North Dakota (2016)**
- Ohio (2016)
- Oregon (1998)
- Pennsylvania (2016)
- Rhode Island (2006)
- Vermont (2004)
- Washington (1998)
- **West Virginia (2017)**
- Washington, D.C. (2010)



# State Medical Marijuana Laws: Current Trends

- Limiting methods of ingestion (i.e., prohibits smoking)
  - Minnesota (2014), New York (2014), Louisiana (2015/2016), Pennsylvania (2016), Ohio (2016), Florida (2017 amendments), West Virginia (2017)
- Adding PTSD, chronic pain, and opioid abuse as qualifying conditions
- Providing explicit employment protections (anti-discrimination provisions)
  - Currently, 12 states with explicit employment protections
    - Most recent legislation contains explicit employment protections
    - Proposed legislation to add protections in states with no employment protections (e.g., Oregon, New Jersey, Massachusetts, Washington)
  - 3 new court decisions regarding employment protections

# State Medical Marijuana Laws: Employment Protections



Biggest issue: is employer required to accommodate off-duty medical marijuana use? (i.e., can employer take action based on marijuana positive drug test alone?)

- Before 2017, courts found no duty to accommodate medical marijuana
  - California, Colorado, Oregon, Washington, Montana, Michigan, New Mexico
  - But, these state medical marijuana laws did not contain explicit employment protections (i.e., had explicitly no protections or were silent)
- 2017 court decisions
  - 2 decisions in states with explicit employment protections: both courts found implied private rights of action and rejected preemption arguments
    - Rhode Island Superior Court
    - Connecticut federal district court
  - 1 case from state without explicit employment protections (Massachusetts Supreme Judicial Court): found possible employment protections under other state laws

# Medical Marijuana Laws: Arkansas

## Issue 6 (2016)

- Effective Nov. 9, 2016
  - Implementing legislation passed March 2017 (HB 1460)
- Contains explicit employment protections
  - Employer “shall not 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 their past or present status as a qualifying patient or designated caregiver (Ark. Const. Am. 98, § 3(f)(3)(A); HB 1460)
  - “Employer” defined as entity that employs 9 or more employees in Arkansas in “20 or more calendar weeks in the current or preceding calendar year” (98, § 2 (22))



# Medical Marijuana Laws: Florida

## Amendment 2 (2016)



- Effective January 2017
  - Amended by legislature (SB 8A): signed and effective June 23, 2017
- Smoking prohibited
  - Lawsuit filed challenging smoking ban
- Appears to explicitly provide NO employment protections
  - “Medical use” does not include use at place of employment unless permitted by employer
  - Does not limit ability of employer “to establish, continue, or enforce a drug-free workplace program or policy”
  - Does not create cause of action against employer for wrongful discharge or discrimination
  - Employer not required to accommodate use of medical marijuana “in any workplace” or “any employee working while under the influence of marijuana”
- Not reimbursable under Florida’s Workers’ Compensation law

# Medical Marijuana Laws: North Dakota

## Measure 5 (2016)

- Effective December 2016
  - Amended by legislature 2017 (SB 2344)
- DUI provision:
  - Patient not considered under the influence of marijuana “solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment” (§ 19-24.1-33(5))
- Extent of employment protections unclear
  - Qualifying patient “not subject to arrest or prosecution or the denial of any right or privilege, including a civil penalty or disciplinary action by a court or occupational or professional regulating entity for the acquisition, use, or possession” (§ 19 - 24.1 - 32(1))
  - Medical use of marijuana by cardholder “is lawful if in accordance with this chapter.” (§ 19-24.1-32(9))
  - Does not prohibit “an employer from disciplining an employee for possessing or consuming usable marijuana in the workplace or for working while under the influence of marijuana.” (§ 19-24.1-34(2))
- Broad off-duty “lawful activities” statute (N.D. Cent. Code § 14-02/4-03 )



# Medical Marijuana Laws: West Virginia

- Signed by Governor April 19, 2017; effective 2019
- Smoking prohibited
- Contains explicit employment protections
  - “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 such employee’s status as an individual who is certified to use medical cannabis.” (§16A-15-4(b)(1))
- Includes specific identification for some types of safety sensitive functions that may not be performed with more than 3ng/mL of active THC in blood
  - Similar to Pennsylvania except PA has 10ng/mL limit



# Medical Marijuana Employment Protections: Connecticut

Connecticut's Palliative Use of Marijuana Act ("PUMA") contains explicit employment protections

- Prohibits discrimination solely on basis of qualifying patient or caregiver status (21a-408p(b))

2017: federal district court held PUMA anti-discrimination provision not preempted by federal law and PUMA contains implied private right of action

➤ *Noffsinger v. SSC Niantic Op. Co.*, 2017 U.S. Dist. LEXIS 124960 (D. Conn. Aug. 8, 2017)

- P-applicant offered position as Director of Recreational Therapy at nursing home; taking medical marijuana for PTSD and disclosed medical marijuana patient status and that she took Marinol before bed; tested positive for marijuana on drug test and denied employment
- Court denied employer's motion to dismiss
- **No federal preemption of anti-discrimination provision**
  - CSA (Controlled Substances Act); ADA (Americans with Disabilities Act); FDCA (Federal Food, Drug, and Cosmetic Act)
  - Court found act of merely hiring a medical marijuana user does not constitute violation of CSA or any other federal, state, or local law

# Medical Marijuana Employment Protections: Rhode Island



Medical marijuana act contains explicit employment protections

- Prohibits discrimination on basis of patient or caregiver status

2017: Rhode Island superior court held implied private right of action under the Act and no federal preemption

➤ *Callaghan v. Darlington Fabrics Corp.*, C.A. No. PC-2014-5680, 2017 R.I. Super. LEXIS 88 (R.I. Super. May 2017)

- Plaintiff-applicant denied summer internship after disclosing her condition and medical marijuana cardholder status; sued for disability discrimination under RI civil rights act and Medical Marijuana Act
- Court denied employer's motion for summary judgment
- Found applicant disabled under state law and that her status as a medical marijuana cardholder signaled to potential employer that she could not have obtained the card without a debilitating medical condition that would cause her to be disabled

# Medical Marijuana Employment Protections: Massachusetts

Statute does not contain explicit employment protections

- “No punishment under state law;” “protection from state prosecution and penalties;” “shall not be penalized under Massachusetts law in any manner, or denied any right or privilege;” does not require “accommodation of any on-site medical use of marijuana in any place of employment”
- **2017 Introduced legislation (H.2385, H.113)**: proposed legislation to add explicit employment protections

July 2017: Massachusetts Supreme Judicial Court held although no private right of action under Act, possible employment protections under other state law (MA handicap discrimination law)

- ***Barbuto v. Adv. Sales & Mktg.*, 78 N.E.3d 37 (Ma. Super. Ct. July 17, 2017)**
  - Employee told supervisor about Crohn’s and medical marijuana and would not consume before or at work; failed drug test and terminated; brought claims for handicap discrimination, denial of right/privilege to use medical marijuana, violation of public policy
  - Trial court- granted employer’s motion to dismiss; supreme court reversed
  - Supreme court found no implied private right of action (not necessary) and no claims for wrongful termination in violation of public policy (affirmed dismissal), but employee could state a claim for handicap discrimination, finding “an exception to an employer’s drug policy to permit its use is a facially reasonable accommodation”
- **Even if no explicit employment protections in medical marijuana law, possible protections under other state law**

# Medical Marijuana Employment Protections



## California

- August 2016: federal district court reaffirmed holding in *Ross v. Ragingwire*, holding no cause of action for violation of FEHA (California's discrimination statute)
  - *Shepherd v. Kohl's Dep't Stores*, Civil No. 1:14-cv-01901-DAD-BAM, 2016 U.S. Dist. LEXIS 101279 (Aug. 2, 2016)

## Washington, D.C.

- November 2016: federal district court held no wrongful-termination under D.C. common law, finding D.C. does not provide clear mandate of public policy that employers must accommodate medical marijuana use by employees but refusing to dismiss disability discrimination claim
  - *Coles v. Harris Teeter, LLC*, 217 F. Supp. 3d 185 (D.D.C. Nov. 14, 2016)

# Medical Marijuana Employment Protections: New Jersey

Current Statute contains no explicit employment protections and previous cases regarding act either settled or dismissed on procedural grounds

2016 Introduced legislation (AB 2482, SB 2161): to add explicit employment protections

- Would prohibit employer from taking adverse action based on positive marijuana test unless employer establishes by preponderance of the evidence that use of medical marijuana impaired employee's ability to perform job responsibilities

## 2 pending cases to watch

### ➤ *Wild v. Carriage Servs*, No. 2:17-cv-1398-JLL-JAD (D.N.J. 2017)

- P informed employer using medical marijuana for cancer, discharged after positive drug test; P sued under NJLAD asserting failure to accommodate and disability discrimination claims
- Employer's motion to dismiss arguing preemption pending; remanded to state court 11/9/2017

### ➤ *Joseph Cobb v. Ardagh Glass*, No. 1:17-cv-04399 (D.N.J. June 2017)

- Post accident drug test- tested positive for marijuana and provided marijuana card
- Employers motion to dismiss pending



# Medical Marijuana and Workers' Comp

## Connecticut

- Workers' Compensation Review Board found medical marijuana reasonable and necessary medical treatment and therefore reimbursable/compensable
  - *Petrini v. Marcus Dairy, Inc.* , 6021 CRB-7-15-7 (May 12, 2016)

## Maine

- Workers' comp board affirmed ALJ's finding that use of medical marijuana constitutes "reasonable and proper medical treatment" under 39-A M.R.S.A. § 206, and ordered employer to reimburse for costs associated with its use
  - *Bourgoin v. Twin Rivers Paper Co., LLC*, 2016 ME Wrk. Comp. LEXIS 30 (ME W.C. Bd 2016)
  - *Noll v. Lepage Bakeries*, Me. W.C.B. No. 16-25, 2016 ME Wrk. Comp. LEXIS 29 (App. Div. en banc 2016) (ordering self-insured employer to pay costs)

## New Jersey

- December 2016: ALJ ordered insurance company to pay for medical marijuana for injured worker
  - *Watson v. 84 Lumber*, No. 2009-15470 (N.J. Div. of Worker's Comp., Trenton Div. Dec. 16, 2016)

# Medical Marijuana and Worker's Comp

## Florida

- Medical marijuana explicitly not reimbursable

## North Dakota (HB 1156)

- Prohibits payment of Workers' compensation benefits for medical marijuana

# State Recreational Marijuana Laws

- Alaska (2014)
- California (2016)
- Colorado (2012)
- Maine (2016)
- Massachusetts (2016)
- Nevada (2016)
- Oregon (2014)
- Washington (2012)
- Washington, D.C. (2014)



All have comprehensive medical marijuana laws

All passed by voter initiatives\*

\*In 2017, Vermont became first state to pass recreational marijuana by legislature but law vetoed by Governor

# Recreational Marijuana Laws: California



## Proposition 64 (2016)

- Effective Nov. 9, 2016
  - Also amends medical marijuana law- new privacy protections
  - Will be regulated by the same agency and using the same framework as medical marijuana
- Allocates money to develop DUI protocols
- Explicitly provides NO employment protections
  - “Nothing in section 11362.1 shall be construed or interpreted to amend, repeal, affect, restrict, or preempt: 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 marijuana in the work place, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law.” (§11362.45(f))

# Recreational Marijuana Laws:

## Maine



### Question 1 (2016)

- Does not mention driving under the influence or impairment
- Provides explicit employment protections for off-duty use
  - “Employment policies. This chapter may not be construed to require an employer to permit or accommodate the use, consumption, possession, trade, display, transportation, sale or growing of cannabis in the workplace. This chapter does not affect the ability of employers to enact and enforce workplace policies restricting the use of marijuana by employees or to discipline employees who are under the influence of marijuana in the workplace.” (§2454(2))
  - “School, employer or landlord may not discriminate. A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person 21 years of age or older solely for that person’s consuming marijuana outside of the school’s, employer’s or landlord’s property.” (§2454(3))
- **Implementation of anti-discrimination provision delayed until January 2018 (LD88)**

# Recreational Marijuana Laws

## Massachusetts (Question 4)

- Effective Dec. 15, 2016
  - Amended by legislature 2017
- Explicitly provides NO employment protections
  - “This chapter shall not require an employer to permit or accommodate conduct otherwise allowed by this chapter in the workplace and shall not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees.” (Section 2(e))



## Nevada (Question 2)

- Effective Jan. 1, 2017
- Explicitly provides NO employment protections
  - “Sections 1 to 18 do not prohibit . . . A public or private employer from maintaining, enacting, and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under sections 1 to 18, inclusive, of this act” (Sec. 2(a))

# Marijuana and Impairment

- Some states have per se limits; no consensus on limit
  - 5 ng/mL THC in blood
    - Colorado, Washington, Montana, Illinois
  - 2ng/mL THC in blood
    - Ohio, Nevada
- Recent legislation contains per se limits for certain safety sensitive positions
  - Pennsylvania: 10ng/mL THC in blood
  - West Virginia: 3ng/mL THC in blood

# Marijuana: Other

## Texas: ALJ advisory Opinion (1/10/2017)

- Background
  - Texas public high school teacher was interviewed after anonymous email accusing teacher of wrongdoing unrelated to marijuana or drugs; during interview teacher admitted to smoking marijuana occasionally; Teacher agreed to submit to drug test, tested positive for marijuana in hair (negative urine); teacher admitted to eating an edible in Colorado over Christmas
  - Teacher resigned and Texas State Board of Educator Certification was seeking to suspend her license for 2 years- ALJ proposal for decision
- ALJ recommended Texas Department of Education take no action against teacher
  - Found that a preponderance of the evidence did not show teacher was unfit to teach; no evidence under the influence; policy only prohibited working under the influence or consuming on the property; policy only mentioned post-accident, reasonable suspicion, and random testing
  - Not unlawful under CO law
  - State did not argue legality under Federal law

# 2017 Introduced Medical Marijuana Legislation

Introduced in at least 16 states  
Trend is to add employment protections

## Massachusetts (H.113)

- Amendment to medical marijuana law to add explicit employment protections

## New Jersey (AB2161, 1294)

- Amendment to medical marijuana law to add explicit employment protections

## Washington (SB1094)

- Amendment to medical marijuana law to add explicit employment protections including positive test

## Oklahoma (HB1877)

- Medical marijuana law with explicit employment protections including positive test

## Kansas (SB 155)

- Medical marijuana law with explicit employment protections including positive test

# 2017 Introduced Recreational Marijuana Legislation

Introduced in at least 22 states  
Although failed, states creating commissions to study

## Arizona (Proposition 205)

- Recreational marijuana law—failed

## Vermont

- Recreational marijuana law; explicitly provides NO employment protections; passed but vetoed by Governor; created Committee to study

## Delaware

- Created Adult Use Cannabis Task Force (23 members) to study

## Rhode Island (SB277A)

- Created 17 member commission to study

## Hawaii (HB 1464)

- Proposed recreational marijuana law; explicitly provides NO employment protections

## New York (A03506)

- Proposed recreational marijuana law; appears to provide explicit employment protections, including positive test

## Minnesota (HB 927/SF1320)

- Proposed recreational marijuana law; explicitly provides NO employment protections

## Oregon (SB 301)

- Would make it unlawful employment practice to condition employment on refraining from using any substance that is lawful to use in state

# 2017 Workplace Drug Testing Laws

## West Virginia (HB 2857)-passed

- Creation of drug free workplace drug testing statute

## Iowa (SB32)-passed

- Amendments to mandatory workplace drug testing law to permit hair for pre-employment testing only

## Maine (SB1222): proposed legislation

- Amendments to mandatory drug testing statute



# Workplace Drug Testing Laws: West Virginia

## West Virginia Safer Workplaces Act (HB 2857)

- Signed by Governor May 2017; effective July 2017
- Not “mandatory” drug testing statute but employers entitled to certain protections if comply with statute
  - Case law previously limited random testing to reasonable suspicion or safety sensitive employees only; compliance with statute avoids case law restrictions and entitles employer to certain legal protections
- Permits testing for applicants and employees
- Must have detailed written policy
- No specific or technical requirements for testing procedures
  - E.g., No limits or reference to specimen type



# Workplace Drug Testing Laws: West Virginia

## Contains standard testing requirements

- Split specimen required
- Opportunity for applicant/employee to provide info that may be considered relevant
- Confirmation testing required and must be conducted at laboratory that is:
  - SAMHSA certified;
  - Approved by HHS under CLIA; or
  - Approved by CAP
- For employees, testing must occur during or immediately before/after regular work period and testing is worked time for compensation/benefits
  - Employer must provide transportation/pay reasonable fee if at other location
- Employer must pay actual costs of testing (except for testing of split)



# Workplace Drug Testing Laws: Iowa

## Iowa (SF 32)

- Signed by Governor May 2017; effective July 1, 2017
- Amends mandatory drug testing statute to permit hair for pre-employment testing only (still prohibited for current employees)
  - Law previously only allowed testing of urine, blood, oral fluid, and breath
  - If no nationally accepted standards for specimen adopted by SAMHSA, standards for confirmed positive results must be standard that has been clear or approved by FDA for particular specimen
  - If directly monitored or observed, individual who is directly monitoring/observing must be of the same gender of donor
  - Testing limited to samples not longer than 1 ½ inches and must be “limited to the portion of the hair that was closest to the skin” (section 730.5 Sec. 30e)



# Workplace Drug Testing Laws: Minnesota

- Mandatory workplace drug testing statute with stringent requirements and penalties
  - Employer is defined as person/entity located or doing business in Minnesota
- *Olson v. Push, Inc.*, No. 14-3160 (8th Cir. Feb. 22, 2016): drug testing statute may apply to employee working in other state if “significant contacts” between Minnesota and the parties or facts giving rise to the claim
  - MN applicant for job in West Virginia
  - Employer conducted business in MN
  - Drug testing performed in MN
  - Significance unknown but if contacts with Minnesota and other states, may be subject to Act

# Workers' Compensation Laws

## Missouri: (SB 66)-Passed

- Workers' compensation claim reduction/denial: rebuttable presumption
  - Test must be performed within 24 hours of accident/injury; employee given opportunity to perform 2<sup>nd</sup> test on original specimen; confirmatory testing using mass spectrometry

## Iowa (HF 518)-passed

- Adds rebuttable presumption for positive post-accident drug/alcohol test results; presumes employee was intoxicated at time of the injury and intoxication was a substantial factor in causing injury

## Maryland (SB 72): Passed

- Workers' compensation premium discount and drug testing

## Kansas: case law

- Kansas Workers' Comp case: insufficient urine specimen, without evidence of intent to thwart test, is not refusal to submit to a test for purposes of Kansas Workers' Compensation Act
  - *Byers v. Acme Foundry*, 2017 Kan. App. LEXIS 12 (KS. Ct. App. Jan. 27, 2017)

# OSHA Post Accident Drug Testing

May 12, 2016: OSHA published final rule on electronic reporting of workplace injuries and illnesses (81 Fed. Reg. 29624)

- Rule requires employers establish a “reasonable procedure” to allow employee to report work related injuries/illness; prohibits practices that discourage reporting
  - Language in preamble appears to prohibit blanket post-accident testing policies- suggests testing may deter reporting

## OSHA issues guidance

## Rule challenged in 2 cases:

- *TEXO ABC/AGC Inc. v. Perez*, No. 3:16-cv-01998-L (N.D. Tex.)
- *Nat’l Assoc. of Home Builders of U.S. v. Perez*, 5:17-cv-00009-R (W.D. Okla.)



# OSHA Post Accident Drug Testing

- March 2017: both cases temporarily stayed 60 days at request of U.S. Gov't
  - U.S. Government requested temporary stays to “allow incoming leadership personnel” at U.S. DOL “adequate time to consider the issue[s] raised”
- April 2017: while cases were stayed, new Secretary of Labor R. Alexander Acosta
- June 28, 2017: OSHA issues Notice of proposed Rulemaking to delay compliance date with electronic reporting requirements until December 2017
  - Tracking of Workplace Injuries and Illnesses: Proposed Delay of Compliance Date, 82 Fed. Reg. 29,261-01 (June 28, 2017): “OSHA also intends to issue a separate proposal to reconsider, revise, or remove other provisions of the prior final rule.”
- June 29 & July 10, 2017: U.S. gov't moved courts to stay both cases so that OSHA “may develop the contemplated proposal to reconsider, revise, or remove provisions of the Rule”
  - OSHA cited proposed rulemaking and stated “OSHA will propose additional rulemaking that could directly affect the scope of the Rule, and therefore the claims at issue in this litigation”
- June 30, 2017: Texas case administratively closed (but can be reopened)
- July 11, 2017: Oklahoma case stayed; OSHA to submit status report every 90 days

# Questions?



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