



NORTH RISK PARTNERS®

---

WAGNER, FALCONER & JUDD, LTD.

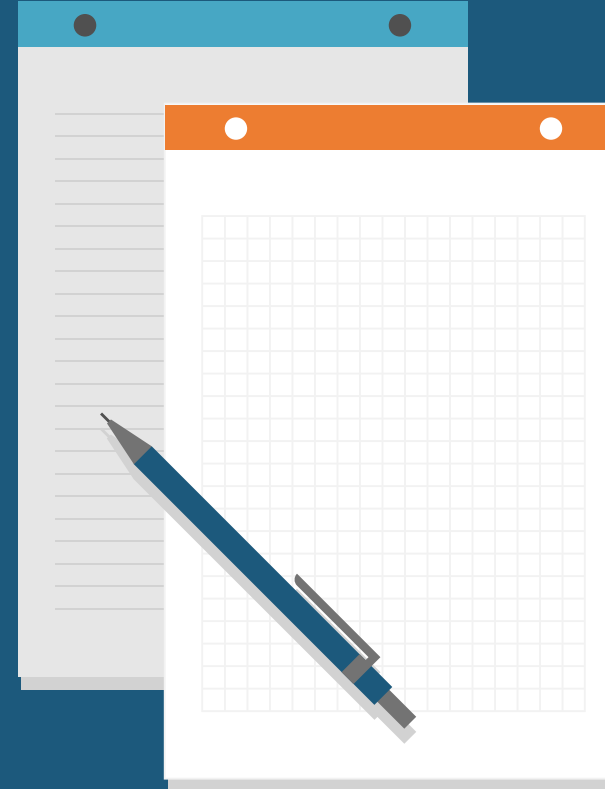
# THE IMPACT OF MARIJUANA LAWS IN THE WORKPLACE

---

NORTH RISK WEBINARS | 2023

# AGENDA

- Types of legalization
- State marijuana law overview
- Rights of medical marijuana users
- Case studies



# PRESENTER

---



**Janell Stanton**

HR Attorney

WAGNER, FALCONER & JUDD, LTD.

# 3 CATEGORIES OF MARIJUANA LEGALIZATION/DECRIMINALIZATION



Medical



Recreational



Cannabidiol  
(CBD)



NORTH RISK  
PARTNERS®

# WHAT IS CBD?

- **Cannabidiol** is a component of marijuana
- Unlike THC, it **does not cause a “high”**
- Can be found in health food stores, coffee shops, tobacco stores, in many different forms



NORTH RISK  
PARTNERS®

# STATE LAWS

---

## Minnesota

- Offers a **medical marijuana** registration program for patients with qualifying medical conditions.
- As of **July 1, 2022**, Minnesota enacted a law which allows small amounts of **hemp-derived THC products** in food and beverages.
  - This does not equate to legal recreational marijuana because the law permits the use of **TCH that is derived from hemp**, not the marijuana plant
- Legal, recreational marijuana may be on its way.



NORTH RISK  
PARTNERS®

# STATE LAWS

---

## Iowa

- Allows the use of **medical CBD** to treat debilitating medical conditions as specified by state law.

# NORTH DAKOTA

---

## North Dakota

- Allows the use of **medical marijuana** to treat defined, chronic, debilitating, or terminal medical conditions.



NORTH RISK  
PARTNERS®

# STATE LAWS

---

## South Dakota

- Offers **medical cannabis registry identification cards** to qualifying patients with specified debilitating medical conditions.
- Qualifying patients can possess **up to three ounces** of cannabis.
- Amendment A passed authorizing adults 21 and over to possess, use, consume, or distribute up to one ounce of marijuana **BUT** the South Dakota Supreme Court affirmed a circuit court ruling declaring Amendment A void.



NORTH RISK  
PARTNERS®

# STATE LAWS

---

## Nebraska

- None

# STATE LAWS

---

## Wisconsin

- CBD Only
- According to an October poll by Marquette University Law School, **64%** of Wisconsinites support legalizing marijuana for any use
- More than **80%** support the idea of a medical marijuana program



NORTH RISK  
PARTNERS®

# MEDICAL MARIJUANA- FEDERAL LAW

---



- Marijuana is a **Schedule I** controlled substance.
- **FMCSA** standards prohibit using even medical marijuana.
- **DOT** still counts a drug test "positive" even if the marijuana was prescribed by a physician.
- **Drug-Free Workplace Act**

# MARIJUANA AND THE ADA



The **Americans with Disabilities Act** (ADA) requires employers to make reasonable accommodations for qualified workers with disabilities. The act does not protect illegal drug use, though it does afford some protections for recovering addicts. Marijuana is an illegal drug under federal law, with no exceptions for medicinal use, so its use is not protected under the ADA.

# MARIJUANA AND THE ADA

---

In 2012, the 9<sup>th</sup> U.S. Circuit Court of Appeals held in *James v. City of Costa Mesa* that although the plaintiffs were “gravely ill,” and California legalized medical marijuana use, the ADA did not protect the plaintiffs’ use of the drug. The court said that the plain language of the ADA only protects drug treatments prescribed by health care professionals when those drugs are not explicitly banned by the federal **Controlled Substances Act**, like marijuana is.



NORTH RISK  
PARTNERS®

# WORKPLACE PROTECTION FOR QUALIFIED PATIENTS

---

MN Employers cannot discriminate against employees or applicants based on either:

- Their status as a qualified patient.
- A positive marijuana test if they are a qualified patient, **unless the patient uses, possesses, or is impaired by marijuana on the employer's premises or during work hours.**

# NO WORKPLACE PROTECTION FOR QUALIFIED PATIENTS



**Iowa-** Law does not require an employer accommodate the use or possession of marijuana in the workplace.



**North Dakota-** Employers may discipline an employee for possessing or consuming marijuana in the workplace or working under the influence.



**South Dakota-** Same as Iowa.



**Wisconsin-** No legal protections. The Wisconsin Fair Employment Act doesn't provide protection either.



NORTH RISK  
PARTNERS®

# DRUG TESTING POLICIES

WHO

WHEN

WHERE

WHY

HOW

# DRUG TESTING POLICIES

---



- Establish a **written policy**
- Distribute the policy and **obtain consent before testing**
- Establish **clear, observable** criteria for reasonable suspicion
- **Apply the policy consistently**

# SCENARIO #1



**Can you withdraw Joe's job offer?**

# SCENARIO #2



Can you  
withdraw  
Joe's job offer?

# SCENARIO #3



**Can you withdraw Joe's job offer?**

# SCENARIO #4



Can you withdraw Joe's job offer?

# SCENARIO #5



+



+



+



## Can Mary legally be terminated?

# QUESTIONS?



# NORTH RISK'S VALUE-ADDED SERVICES HOTLINE

---



(888) 667-4135\*



hr@northriskpartners.com\*



Submit a ticket through your WFJ  
Compliance Center Portal

Personalized  
consulting and  
best practices  
from HR  
professionals &  
attorneys

\*Portal enrollment included.



NORTH RISK  
PARTNERS®