



NORTH RISK PARTNERS
WAGNER, FALCONER & JUDD, LTD.
MINNESOTA PASSES RECREATIONAL MARIJUANA LAW
IMPACT FOR EMPLOYERS
NORTH RISK WEBINARS | 2023

1



AGENDA

- Details on the New Law
- Drug Testing
- Disciplinary Action
- DATWA
- Enforcement
- Next Steps

NORTH RISK PARTNERS
WAGNER, FALCONER & JUDD, LTD.
NORTH RISK WEBINARS | 2023

2



PRESENTER



Janell Stanton
HR Attorney
WAGNER, FALCONER & JUDD, LTD.

NORTH RISK PARTNERS
WAGNER, FALCONER & JUDD, LTD.
NORTH RISK WEBINARS | 2023

3

LEGALIZED

Minnesota becomes the 23rd state to legalize recreational marijuana.

- Minnesota already offered a medical marijuana program for patients with qualifying conditions.
- As of March 1, 2022, Minnesota passed a law permitting consumption by liquid, pills, and smoking dried raw hemp-derived cannabis.


NORTH RISK PARTNERS[®]
WICKER, FALCNER & JUDD, LTD.

NORTH RISK WEBINARS | 2023

4

EFFECTIVE DATE

- The law becomes effective August 1, 2023.
- The new law created an Office of Cannabis Management that will oversee the program.
- It is expected to take about 18 months for the first dispensaries to open.



NORTH RISK PARTNERS[®]
WICKER, FALCNER & JUDD, LTD.


NORTH RISK WEBINARS | 2023

5

WHAT IS PERMITTED?

Adults 21 and older may:

- Use, possess, or transport cannabis paraphernalia;
- Possess or transport two ounces or less of adult-use cannabis flower in a public place;
- Possess two pounds or less of adult-use cannabis flower in the individual's private residence;
- possess, or transport eight grams or less of adult-use cannabis concentrate;
- Possess or transport edible cannabis products or lower-potency hemp edibles infused with a combined total of 800 milligrams or less of tetrahydrocannabinol.



NORTH RISK PARTNERS[®]
WICKER, FALCNER & JUDD, LTD.

NORTH RISK WEBINARS | 2023

6

WHAT IS PERMITTED?

Marijuana may be used:



In a private residence, including the yard and area immediately surrounding the house.



On private property that is not generally accessible by the public, unless explicitly banned.



On the premises of an establishment licensed to permit on-site consumption



WAGNER, FALCONER & JUDD, LTD.


NORTH RISK WEBINARS | 2023

7

NOTICE WHAT'S MISSING?

The workplace!





WAGNER, FALCONER & JUDD, LTD.

NORTH RISK WEBINARS | 2023

8

LAWFUL CONSUMABLE PRODUCTS STATUTE

- If an employee uses cannabis outside of work hours and off the work premises, then an employer may not lawfully discipline an employee for that behavior.
- Employers can still prohibit the use of marijuana if the use of it would violate federal or state law or cause the employer to lose money or a licensing benefit under federal law.



WAGNER, FALCONER & JUDD, LTD.

NORTH RISK WEBINARS | 2023

9

DRUG TESTING

- Cannabis testing is different from drug and alcohol testing
- After the effective date of this law, employers may test under a compliant policy for the following reasons:
 - Reasonable Suspicion
 - Random testing for certain employees
 - Treatment program testing



NORTH RISK PARTNERS
WAGNER, FALCONER & JUDD, LTD.


NORTH RISK WEBINARS | 2023

10

TESTING JOB APPLICANTS?

NOPE.

The new law prohibits testing job applicants for cannabis as a condition of employment. Going forward, an employer may not refuse to hire a job applicant solely because the applicant's test results indicate the presence of cannabis.



NORTH RISK PARTNERS
WAGNER, FALCONER & JUDD, LTD.

NORTH RISK WEBINARS | 2023


11

UNLESS...

For certain positions, cannabis is still considered a drug and employers may test applicant for cannabis.

The positions are:

- Safety-sensitive positions (as defined by the statute)
- Peace officers
- Firefighters
- A position requiring face to face care, education, training, supervision, counseling, consultation, or medical assistance to children, vulnerable adults, or healthcare patients
- A position requiring a commercial driver's license or requiring the employee to operate a motor vehicle for which state or federal law requires drug or alcohol testing of the applicant or an employee; any position funded by a federal grant
- Or any other position for which state or federal law requires testing of a job applicant or employee for cannabis



NORTH RISK PARTNERS
WAGNER, FALCONER & JUDD, LTD.

NORTH RISK WEBINARS | 2023

12

OTHER TESTING PROHIBITED?

- Yes, employers may no longer require routine physical examination cannabis testing for most positions, nor can they require cannabis testing on an arbitrary or capricious basis.



NORTH RISK PARTNERS®
WAGNER, FALCNER & JUDD, LTD.


NORTH RISK WEBINARS | 2023

13

CAN EMPLOYEES BE SUBJECT TO DISCIPLINE?

Yes, if the employee uses, possesses, sells, transfers, or is impaired while working, while on company property, or operating company equipment **and** if any of the following requirements are met:

- As a result of consuming a cannabis or hemp-derived product, the employee does not possess the clearness of intellect and control of self that the employee otherwise would have; or
- If testing verifies the presence of cannabis following a confirmatory retest; or
- If the employee's written work rules for cannabis apply to such conduct and the policy meets the minimum requirements of the Minnesota Drug and Alcohol Testing in the Workplace Act ("DATWA"), Minn. Stat. § 181.952.
- If the employer is required to do so under state or federal law or if a failure to do so would cause an employer to lose a monetary or licensing benefit under federal law.



NORTH RISK PARTNERS®
WAGNER, FALCNER & JUDD, LTD.

NORTH RISK WEBINARS | 2023

14

KEEP THE OTHER DATWA REQUIREMENTS IN MIND

If it's the employee's first positive drug test, MN employers must offer the employee the chance to go to rehab instead of firing them.



NORTH RISK PARTNERS®
WAGNER, FALCNER & JUDD, LTD.

NORTH RISK WEBINARS | 2023

15

DATWA'S WRITTEN POLICY REQUIREMENTS

Specific job applicants and employees who are subject to testing

Circumstances when testing may be required

Right to refuse testing and the consequences of refusal

Disciplinary action that can be taken

The right to explain a positive confirmatory test and any other appeal procedures

Provide written notice of testing and an acknowledgement form

Test must be conducted by a licensed lab

NORTH RISK WEBINARS | 2023

WAGNER, FALCNER & JUDD, LTD.

16

ENFORCING THE LAW

Job applicants or employees can bring a civil action based on an employer's or laboratory's violation of the DATWA.

NORTH RISK WEBINARS | 2023

Available remedies include:

- Damages
- Attorney's fees, if the violation is knowing or reckless
- Injunctions prohibiting the employer or laboratory from violating the DATWA
- Any other equitable relief the court deems appropriate, including:
 - Hiring
 - Reinstatement, and
 - Back pay

WAGNER, FALCNER & JUDD, LTD.

17

ENFORCING THE LAW

If an employer violates the lawful consumable product law, a job applicant or employee can bring a civil action, and if the court finds a violation can award:

Damages - limited to wages and benefits lost due to the violation

Court costs and attorneys fees

NORTH RISK WEBINARS | 2023

WAGNER, FALCNER & JUDD, LTD.

18

WHAT NOW?

Employers with Minnesota employees should revise their drug and alcohol testing policies

Consider whether testing for cannabis makes sense for your company in light of these changes.




NORTH RISK PARTNERS[®]
WAGNER, FALCONER & JUDD, LTD.


NORTH RISK WEBINARS | 2023

19

WHAT ABOUT MEDICAL MARIJUANA?

That program will still exist.

Employers will still be prohibited from discriminating against a job applicant or employee who is enrolled in the medical marijuana program



NORTH RISK PARTNERS[®]
WAGNER, FALCONER & JUDD, LTD.

NORTH RISK WEBINARS | 2023

20

QUESTIONS?



NORTH RISK PARTNERS[®]
WAGNER, FALCONER & JUDD, LTD.

NORTH RISK WEBINARS | 2023

21

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
WAGNER, FALCONER & JUDD, LTD.

NORTH RISK WEBINARS | 2023
