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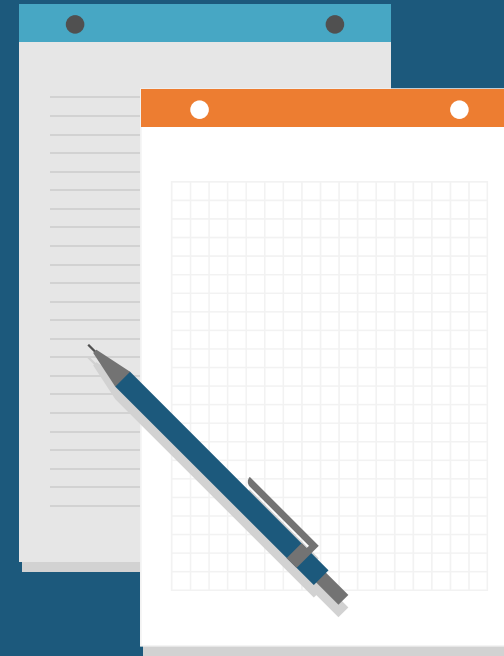
MINNESOTA PASSES RECREATIONAL MARIJUANA LAW

IMPACT FOR EMPLOYERS

NORTH RISK WEBINARS | 2023

AGENDA

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



PRESENTER



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WAGNER, FALCONER & JUDD, LTD.

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.



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.



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.



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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



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NOTICE WHAT'S MISSING?

The workplace!



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.

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



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.



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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



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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.



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.



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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.



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



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ENFORCING THE LAW

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



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



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



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.



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**



QUESTIONS?



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