



Drugs in the Workplace:

Getting Into the Weeds of State and Federal Drug Laws for Employers



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PRESENTATION FRAMEWORK

- **Legal Considerations**
 - ADA/Chapter 21 of the Texas Labor Code
- **Drafting a Drug Testing Policy**
 - Basic Considerations
 - Prescription Drugs
 - Medical/Legalized Marijuana
- **Special Considerations**
 - Federal Laws Requiring Testing
 - Texas Workers' Compensation Act



TWO TYPES OF LAWS

- **Laws requiring affirmative anti-drug policies and workplace drug testing**
 - *i.e.*, laws that require or permit employers to act
- **Laws protecting workers' rights**
 - *i.e.*, laws that prohibit employers from acting
- ***Drug testing policies must respect both considerations***

- **Americans with Disabilities Act**
- **Chapter 21 of the Texas Labor Code**
- **FMLA**





PROHIBITIVE LAWS (CONT'D)

- Americans with Disabilities Act
 - Cannot discriminate against/must reasonably accommodate **qualified individuals with a disability.**
 - Exception for individuals “currently engaging in the illegal use of drugs” when the employer “acts on the basis of such use.”





PROHIBITIVE LAWS (CONT'D)

- *Shirley v. Precision Castparts Corp.* (5th Cir. 2013)



PROHIBITIVE LAWS (CONT'D)

- ADA's "safe harbor" provision





PROHIBITIVE LAWS (CONT'D)

- Chapter 21 of the Texas Labor Code



PROHIBITIVE LAWS (CONT'D)

- Reasonable Accommodations





Implementing a Drug Testing Policy

- **Implementing a Drug Testing Policy**
 - Who?
 - What?
 - When?
 - Where?
 - Why?
 - How?





PRACTICAL APPLICATION

- **Implementing a Drug Testing Policy**
 - **Other Considerations**





SPECIAL ISSUE

Prescription Drugs

- Prescription Drugs:
 - *Barnard v. L-3 Communications* (N.D. Tex. 2017)



- Prescription Drugs:
 - *EEOC v. Oncor Elec. Delivery Co.* (N.D. Tex.)
 - Filed July 11, 2018





SPECIAL ISSUE

Medical and Recreational Marijuana

(or “Marihuana,” if you’re the Texas Legislature)

- Medical Marijuana Issues



- *Noffsinger v. SSC Niantic Operating Co., LLC* (D. Conn. Aug 8, 2017) (Connecticut's medical marijuana statute)



- Recreational Marijuana Issues



- Philosophical Issues





AFFIRMATIVE LAWS

Drug-Free Workplace Act of 1988



AFFIRMATIVE LAWS (Cont'd)

Federal Motor Carrier Safety Administration (FMSCA) regulations

Texas Transportation Code



SPECIAL CASE – STATE LAW

Texas Workers' Compensation Act



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