

## 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



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



**PROHIBITIVE LAWS** 

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





- 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."





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





• ADA's "safe harbor" provision





• Chapter 21 of the Texas Labor Code





• Reasonable Accommodations





**PRACTICAL APPLICATION** 

## **Implementing a Drug Testing Policy**



#### **PRACTICAL APPLICATION**

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





**PRACTICAL APPLICATION** 

- Implementing a Drug Testing Policy
  - Other Considerations





## **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



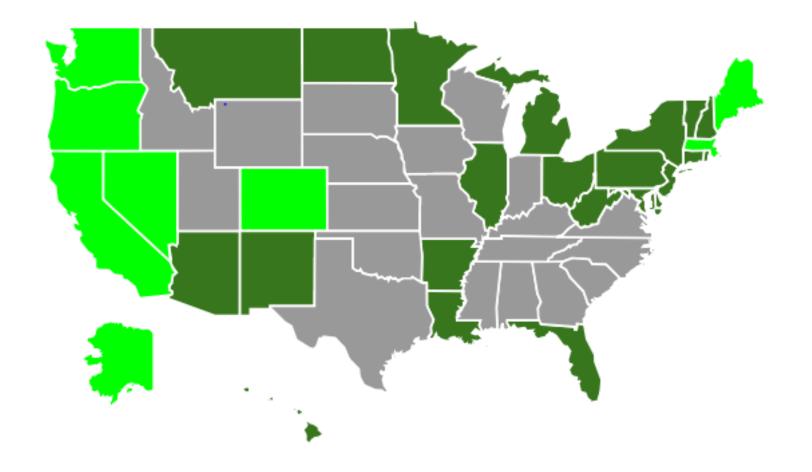


# Medical and Recreational Marijuana

#### (or "Marihuana," if you're the Texas Legislature)



#### **SPECIAL ISSUE: LEGALIZED MARIJUANA**





### **SPECIAL ISSUE: LEGALIZED MARIJUANA**

• Medical Marijuana Issues





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





### **SPECIAL ISSUE: LEGALIZED MARIJUANA**

• Recreational Marijuana Issues





• Philosophical Issues





**AFFIRMATIVE LAWS** 

## **Drug-Free Workplace Act of 1988**

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# Federal Motor Carrier Safety Administration (FMSCA) regulations

# **Texas Transportation Code**

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## **Texas Workers' Compensation Act**



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