



BUSINESS AND CORPORATE LAW EMPLOYMENT LAW SOCIAL MEDIA LAW HIPAA SOCIAL MEDIA AND INTERNET LAW
DISCRIMINATION LGBT ISSUES UNEMPLOYMENT COMPENSATION CONTRACTS HEALTHCARE AND HOME HEALTHCARE

THE EFFECTS OF MEDICAL MARIJUANA IN THE WORKPLACE

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Selected Awards and Publications

- Contributor:
 - Hiring Policy for the United Nations
 - *HIV and the AIDS Pandemic*, Oxford Press
 - SHRM National
 - HR Keystones, *Pennsylvania SHRM*
 - Bloomberg's *BusinessWeek*, and Pennsylvania SHRM's *HR Keystones*.
- Interviews:
 - *All Things Considered*, NPR
 - *Business Matters*, Channel 69
 - Penn State Radio
- Awards:
 - *Lawyers of Distinction* – 2015-present
 - *10 Best Attorneys* – 2016-present
 - *Top Attorneys* – 2016-present
 - *Top 20 Under 40*, Eastern Pennsylvania Business Journal;
 - Grantee, Public Justice Foundation
 - NY State Bar Ethics Award



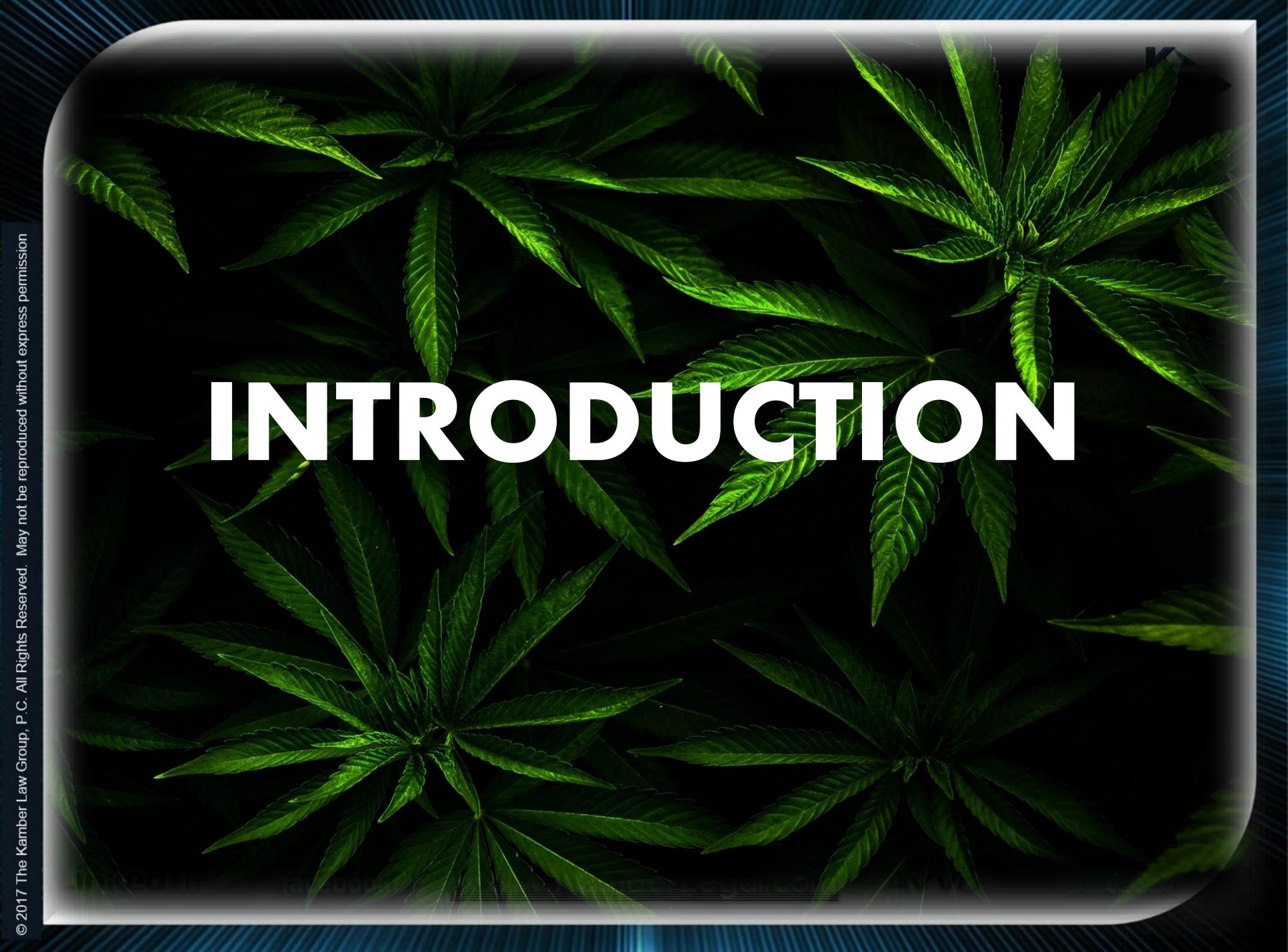
AGENDA

Introduction

Legal Perspectives

Best Practices



A top-down view of several vibrant green cannabis leaves with serrated edges, set against a dark background. The leaves are arranged in a pattern, with some overlapping. The entire scene is framed by a white border with rounded corners.

INTRODUCTION



MARIJUANA

Cannabis, better known as marijuana, is the most widely used illicit drug in Western societies.

More than 96 million Americans (40%) age 12 or older report having used cannabis during their lifetime.

An estimated 15 million Americans are current users (defined as using the drug at least once in the past 30 days.)

Among the reported 75 million Americans over age 26 who report having used cannabis, more than 70 percent are employed full-time.

Many of these individuals are subject to random workplace drug testing.



An illicit substance in the United States for a century, it was outlawed by the federal government in 1937 as a drug for the lower classes.

Yet the U.S. government has been doing experiments on medical marijuana since the 1970s, providing patients medical cannabis through the IND program, grown at the University of Mississippi.

Approval currently stands at 62 percent, according to the Pew Research Center.

Two states have led the way: Colorado and Washington voted in 2012 to allow the cultivation, possession and sale of cannabis, contravening the federal government and aiming to flip the perception of the drug from a crime to a commodity.

Today, 34 states allow marijuana for medical use and 11 permit for recreational.



MEDICAL MARIJUANA: MEANS OF ADMINISTRATION



Administration through:

- Via a “cigarette” (joint,
- Via vaporization (bong, pipe, etc.)
- Via food (e.g. brownies and candies)
- Via medication (tablets)
- Via salves & tinctures

Administration Forms:

- Flowers
- Hash
- Honey oil
- Shatter
- Wax
- Resin





LEGAL PERSPECTIVE: FEDERAL



MARIJUANA UNDER FEDERAL LAW



Under the federal Controlled Substances Act (“CSA”) , marijuana is classified as a "Schedule I drug" meaning it:

- has the potential for abuse,
- has no currently accepted medical use in treatment in the U.S., and
- has a lack of accepted safety for use of the drug under medical supervision.



The Supreme Court has stated that it is illegal to use, sell or possess marijuana, even for medical use.



In 2015, Congress barred the Justice Department from spending any money to prevent states from “implementing their own state laws that authorize the use, distribution, possession or cultivation of medical marijuana.”



MARIJUANA AND FEDERAL RIGHTS

FEDERAL DRUG TESTING

- Federal agencies conducting drug testing must follow standardized procedures established by the Substance Abuse and Mental Health Services Administration (SAMHSA), part of the U.S. Department of Health and Human Services (DHHS).
- While private employers are not required to follow the SAMHSA guidelines, court decisions have supported following these guidelines, which were designed to ensure accuracy and validity of the testing process.

EEOC/PHRC Perspective

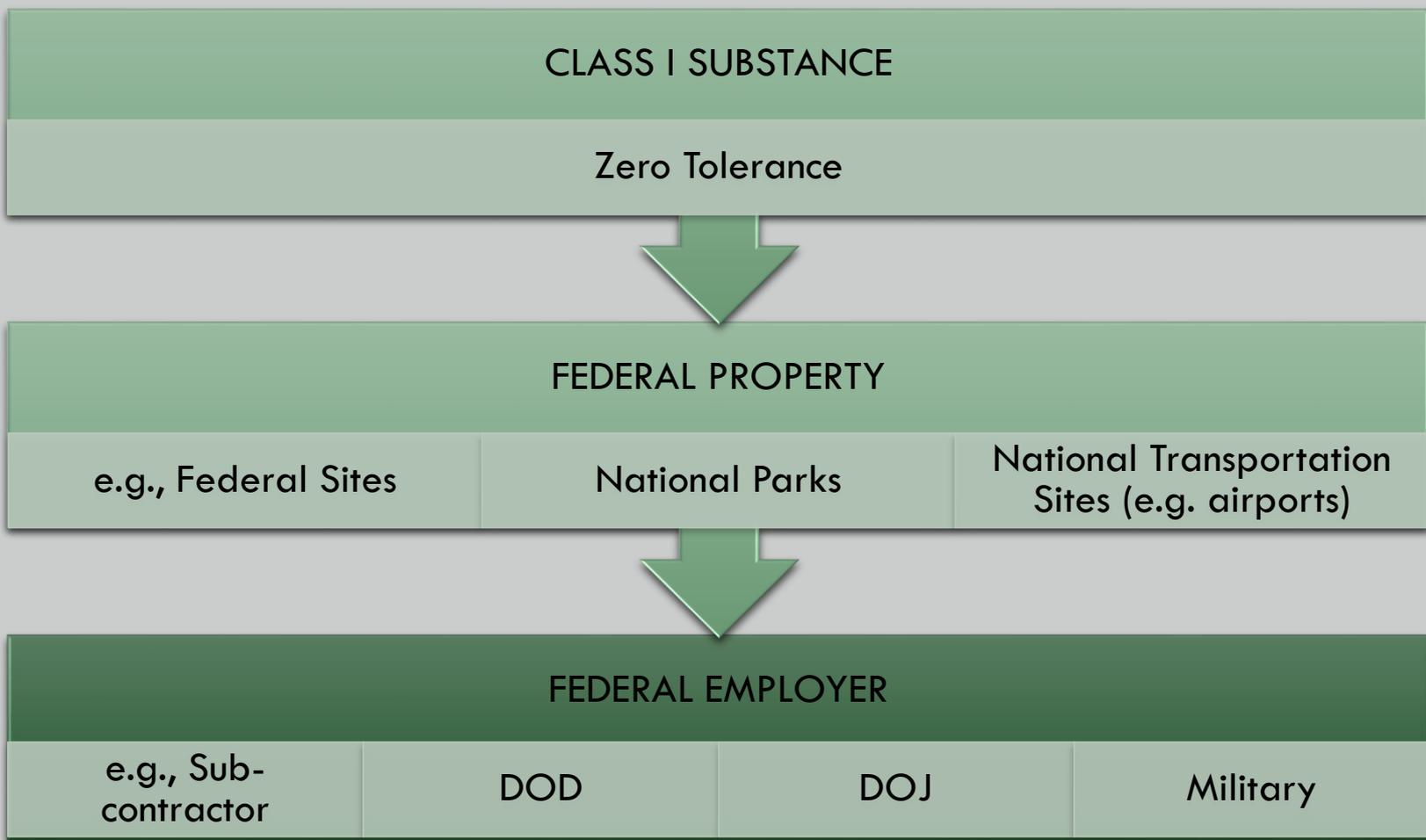
- Black Americans were nearly four times as likely as whites to be arrested on charges of marijuana possession, even though the two groups used the drug at similar rates, according to new federal data

ADA/ FMLA Perspective

- Not a consideration, as it is illegal. No accommodation required.



ON THE JOB DRUG TESTING: FEDERAL





LEGAL PERSPECTIVE: PENNSYLVANIA

PENNSYLVANIA MEDICAL MARIJUANA LAW



QUALIFYING CONDITIONS:

- ALS (Lou Gehrig's disease)
 - Autism
 - Cancer
 - Crohn's disease
 - Epilepsy
 - Glaucoma
 - HIV/AIDS
 - Huntington's disease
 - Inflammatory bowel disease
 - Intractable seizures
 - Intractable spasticity
 - Multiple Sclerosis
 - Neuropathies
 - Parkinson's disease
 - Post-traumatic stress disorder
 - Sickle cell anemia
 - Severe chronic or intractable pain
 - Terminal illness (defined as 12 months or fewer to live)
- *Just opened for new illnesses by Governor Wolf upon application



PATIENT POSSESSION LIMITS

30 day supply -- only cannabis-infused pills, oils, topical ointments, tinctures or liquids are allowed.

PENNSYLVANIA MEDICAL MARIJUANA LAW



EMPLOYMENT

- No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana.
- Nothing in this act shall require an employer to make any accommodation of the use of medical marijuana on the property or premises of any place of employment. This act shall in no way limit an employer's ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position.
- Nothing in this act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of Federal law.

RECIPROCITY

- It is not a violation of state law "if a parent or guardian of a minor under 18 years of age lawfully obtains medical marijuana from another state, territory of the United States or any other country to be administered to the minor."

The image features a top-down view of several vibrant green cannabis leaves with serrated edges, set against a dark, almost black background. The leaves are illuminated from above, creating bright highlights and deep shadows that emphasize their texture. The entire scene is framed within a rounded rectangular border. In the background, a subtle blue grid pattern is visible, particularly towards the edges.

WORKPLACE POLICIES



IMPACTED WORKPLACE POLICIES

SUBSTANCE ABUSE POLICIES

ZERO TOLERANCE – FEDERAL JOBS

DRUG TESTING

VEHICLE & RECEIPT POLICIES

EEO ACCOMMODATION

UNION & ASSOCIATION CBAS

MULTISTATE EMPLOYER

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IMPACTED WORKPLACE POLICIES



SUBSTANCE ABUSE POLICIES

- *Can always test for impairment – always illegal*
- *Include ALL medications (opioids, anyone?)*
- Employers have a right to drug test and fire patients who test positive for marijuana, regardless of their medical use. *Ross v. Raging Wire (CA)*
- Watch for new signs of misuse



ZERO TOLERANCE – FEDERAL JOBS

- Marijuana use is never permitted in jobs with federal drug testing regulations, such as the transportation industry. *Ross v. Raging Wire*
- *Otherwise, not a good idea*



IMPACTED WORKPLACE POLICIES



DRUG TESTING

- Testing for accidents, upon suspicion,— GOOD.
- Random, hiring -- OK, BUT WHY?
- Medical Review Officers can verify drug test results as 'positive' for marijuana even if the employee is using the drug under state law without fear that by so doing, they are ignoring medical authority making such use lawful. *Gonzales et al. v. Raich, et al.*



KNOW YOUR MRO AND LAB PROCEDURES- DON'T PROMISE AND NOT DELIVER



DRUG TESTING PROCEDURE: BASICS

Different Means of Testing:

- Hair
- Urine
- Blood
- Saliva
- Sweat

Retention Rate:

- **7-30 days** in urine
- Up to **90 days** in hair
- Up to **2 weeks** in blood

Drug Testing:

- Usually an initial screening test followed by a second test that identifies and/or confirms the presence of a drug or drugs.
- Most laboratories use commercially available tests that have been developed and optimized to screen urine for the "major drugs of abuse."

Automatic Screening:

- For most drugs of abuse testing, laboratories compare results of initial screening with a predetermined cut-off.
- Anything below that cut-off is considered negative; anything above is considered a positive screening result.



DRUG TESTING PROCEDURE: RETESTING

Next

- The positive drug test result is sent from the lab to the Medical Review Officer (MRO).
- The MRO speaks to the employee letting them know their specimen was positive and asks if there are any medical explanations.
- If the employee can document a prescription and this is verified by the MRO and this prescription is what caused the positive result at the lab – then the MRO reverses the result to negative and you, the employer, will receive the result as a negative.

Requested Retesting

- If retesting is requested, it should be an the employee's expense.
- It is often up to the MRO to decide whether retesting is indicated.
- If the MRO approves, the original sample is tested again, either by the lab or it is sent to a different lab for analysis. There is never to be a new sample.

What Not to Do:

- Many times the employee will come to you and say “Hey you know me, there is no way I am positive for drugs. Let me prove it to you, I’ll go back for another test tomorrow.
- This should **never** be an option.

MORE IMPACTED WORKPLACE POLICIES



VEHICLE & RECEIPT POLICIES

- WC Policy Testing
- Driving under the influence
- Receipts itemized



EEO ACCOMMODATION

- ADA does not protect the rights of disabled patients to use medical marijuana, even when prescribed by a doctor.
- Individual with a disability' does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use. *James v. City of Costa Mesa*
- No accommodation required under state or federal law, BUT
- PHRC said it would enforce

IMPACTED WORKPLACE POLICIES



UNION & ASSOCIATION CBAS

- Need to negotiate disciplinary issues
- Arbitrators do not terminate for recreational marijuana use
- Use of cameras and other forms of detection, as well as process for testing – negotiate ahead of time



MULTISTATE EMPLOYER

- Must address issues in ALL states
- Lots of other considerations for handbook process and enforcement
- Must abide by all laws.



BEST PRACTICES



BEST PRACTICES



Knows the new signs of ingestion



Zero means ZERO: don't do it unless you need to



Update your policies: no "Pimp my Ride" handbook



Don't promise and not deliver



Accommodation? Unclear... Discrimination? Very clear.



Work out the details if you are unionized, multistate, etc.



LEGITIMATE BUSINESS PURPOSE



QUESTIONS...COMMENTS?

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