

# CLEARING THE HAZE:

## NAVIGATING RECREATIONAL MARIJUANA LEGALIZATION IN THE WORKPLACE

Featuring:

**Molly DiBianca, Esq.**

Attorney, Member in Charge | Clark Hill Wilmington



HOSTED BY:



# WEED AT WORK:

Navigating Delaware's Legalization Statute

Molly DiBianca, Esq.



# AGENDA

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- Applicable Laws
  - Federal Law
  - Delaware
  - Medical Marijuana
- Application
  - Hiring
  - Testing
  - Workplace Rules



# APPLICABLE LAWS



# FEDERAL LAW

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- **Controlled Substances Act**
  - Use, possession, and sale is illegal
  - No currently accepted medical uses
- Enforcement (or lack thereof)

# DELAWARE'S LAWS

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- 16 Del. Chpt. 49A
  - Medical Marijuana
- HB 1
  - Legalization
- HB 2
  - Sales

# HB 1

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- **Effective April 23, 2023**
  - Gov. Carney
- **Background / Objectives**
  - Eliminate the illegal market
  - Address criminal justice concerns
  - Legalization in CO and WA
    - 38k / 22k jobs
  - Legalized in NY, NJ, and MD

# HB 1

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- Definitions
  - Adults = 21+
  - Personal Use Quantity
- Now legal:
  - Possession
  - Use
  - Display
  - Purchase
  - Transportation



# HB 1

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- Not Legal
  - Selling
  - Gifting with another transaction
  - Consumption in moving vehicle
  - Accessible in vehicle
  - Consumption in public areas
  - Growing, cultivation, manufacturing

# HB 2

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- Regulatory
- Licensure

# MEDICAL MARIJUANA: CONDITIONS

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- Terminal illness
- Cancer
- HIV
- Immune deficiency
- Cirrhosis
- Lateral Sclerosis
- Alzheimer's
- PTSD
- Epilepsy / Seizure disorder
- Glaucoma
- Debilitating Migraines



# MEDICAL MARIJUANA: PROHIBITIONS

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- Engaging in conduct under the influence
  - if it would constitute professional malpractice
- Possession:
  - School bus
  - School
  - Correctional facility
  - Health-care facility
- Smoking:
  - In any transportation
  - In any public place



# MEDICAL MARIJUANA: PROHIBITIONS

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- Operating, navigating, or controlling
  - Motor vehicle, boat, or aircraft
  - While under the influence
- Sharing with non-cardholder



# MEDICAL MARIJUANA: PROHIBITIONS

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- Anti-discrimination in employment
- Unless the employer would lose money or licensing under federal law



# MEDICAL MARIJUANA: ADA

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- Current users are not protected
  - Recovery vs. non-recovery
- Discrimination at hiring
  - Best practices for disclosure
- Testing as accommodation





# APPLICATION





# JUST SAY “NO”?

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- Can you decline to hire candidates who use recreationally?

# JUST SAY “NO”?

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- Can you
  - Ban possession
  - Ban consumption
  - Ban impairment
    - Best practices

# JUST SAY “NO”?

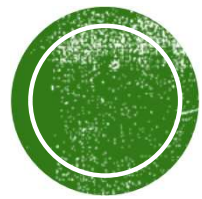
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- Can you test?
  - Pre-employment
  - Random
  - Reasonable suspicion
  - Post-accident
- Medical Marijuana

# BEST PRACTICES

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- Communication is key
- Review of practices
- Policy revision
- Consult counsel



# QUESTIONS?

Molly DiBianca, Esq.

[mdibianca@clarkhill.com](mailto:mdibianca@clarkhill.com); (302) 250-4748

# UPCOMING EVENTS

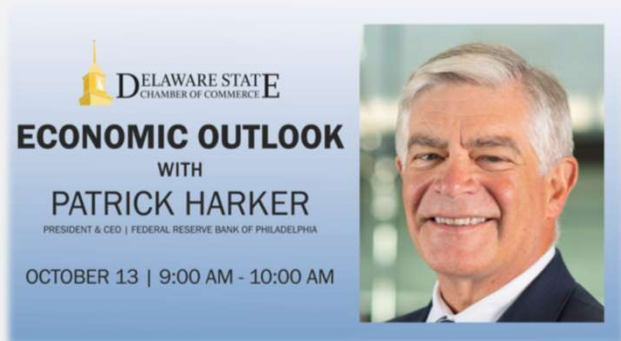
## **Developing Delaware** Thursday, October 5



## **Networking Breakfast** Thursday, October 12



## **Webinar with Pat Harker** Friday, October 13



## **Superstars in Business Awards Luncheon** Wednesday, November 8

