

CLEARING THE HAZE:

NAVIGATING RECREATIONAL MARIJUANA LEGALIZATION IN THE WORKPLACE

Featuring:

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Attorney, Member in Charge | Clark Hill Wilmington



HOSTED BY:



WEED AT WORK:

Navigating Delaware's Legalization Statute

Molly DiBianca, Esq.



AGENDA

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



APPLICABLE LAWS



FEDERAL LAW

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

DELAWARE'S LAWS

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

HB 1

- **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

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

HB 1

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

HB 2

- Regulatory
- Licensure

MEDICAL MARIJUANA: CONDITIONS

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



MEDICAL MARIJUANA: PROHIBITIONS

- 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

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



MEDICAL MARIJUANA: PROHIBITIONS

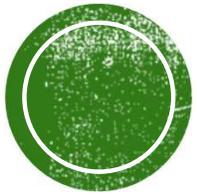
- Anti-discrimination in employment
- Unless the employer would lose money or licensing under federal law



MEDICAL MARIJUANA: ADA

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





APPLICATION



JUST SAY “NO”?

- Can you decline to hire candidates who use recreationally?

JUST SAY “NO”?

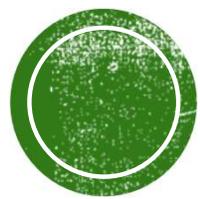
- Can you
 - Ban possession
 - Ban consumption
 - Ban impairment
 - Best practices

JUST SAY “NO”?

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

BEST PRACTICES

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



QUESTIONS?

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UPCOMING EVENTS

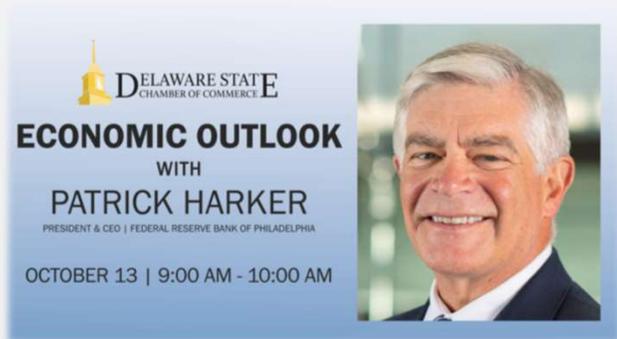
Developing Delaware
Thursday, October 5



Networking Breakfast
Thursday, October 12



Webinar with Pat Harker
Friday, October 13



Superstars in Business Awards Luncheon
Wednesday, November 8

