

Tips

- Make it part of the healthcare benefit.
 - Take advantage of the safe harbor in the ADA.
- Don't forget about GINA
- Don't forget about HIPAA

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Does The EEOC Have to Conciliate in “Good Faith”?

- 7th Circuit Held: A court cannot review the EEOC's conciliation efforts.
 - **Rationale:**
 - Confidentiality
 - EEOC Discretion
- *Mach Mining LLC v. EEOC, U.S., No. 13-1019*



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EEOC “Good Faith” Conciliation: What’s Next?

- EEOC Transparency and Accountability Act
 - Provide judicial review of “good faith” pre-suit conciliation efforts.
- Litigation Oversight Act of 2014
- Certainty in Enforcement Act of 2014

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Duty to Accommodate: Pregnant Employees

- Employee sought review to reverse a decision that there was no discrimination.
 - UPS has a “blind” light duty policy
 - Everyone treated the same except those injured on the job.



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Who Is Similarly Situated?

- Employee argues that she should be compared with
 - Employer compared her with those not accommodated.
- EEOC Guidance:
 - Title VII requires that individuals affected by pregnancy, childbirth, or related medical conditions be treated the same for all employment-related purposes as other persons not so affected but similar in their ability or inability to work.

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FMLA and ADA

Discussing HR's Rights and Obligations
Through Hypothetical Scenarios

Randy Thompson
Anthony Grice

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Today's Presentation

- FMLA
 - An Act protecting employees' right to family sick leave
 - Eligible employees generally provided up to twelve weeks of unpaid leave
- ADA
 - An Act protecting disabled employees' right to work
 - Prohibits discrimination against employees with disabilities or perceived disabilities
 - Requires employers to provide reasonable job accommodations

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Allison

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Bill

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Bill 2.0

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Horshak

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Message

Be very specific and diligent in
verifying the medical certification

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Emily

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**The (New) Top 30
FLSA Questions**

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**DO I HAVE TO GIVE MY
EMPLOYEES PAID
BREAKS?**

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**DO I HAVE TO GIVE MY
EMPLOYEES A LUNCH
BREAK?**

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**CAN I FORCE MY
EMPLOYEES TO WORK
OVER 8 HOURS PER DAY?**

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**DO I HAVE TO PAY AN
EMPLOYEE OVERTIME
FOR WORKING ON A
HOLIDAY, SATURDAY, OR
SUNDAY?**

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**IF AN EMPLOYEE WORKS
40 HOURS AND GETS 8
HOURS HOLIDAY PAY, DO
I HAVE TO PAY OVERTIME
FOR THE HOURS OVER
40?**

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**DO I HAVE TO PAY FOR
WORK I DID NOT
REQUEST?**

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**DO I HAVE TO PAY FOR
AN EMPLOYEE'S ON-CALL
TIME?**

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**DO I HAVE TO COUNT ALL
TIME WORKED AT ALL
LOCATIONS WHEN
COMPUTING OVERTIME EVEN
IF THE WORK WAS FOR
DIFFERENT COMPANIES?**

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**DO I HAVE TO PAY
OVERTIME FOR WORK
OVER 8 HOURS PER DAY?**

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**DO I HAVE TO PAY
VACATION PAY?**

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**DO I HAVE TO PAY
SEVERANCE PAY?**

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**IS IT POSSIBLE TO PAY AN
“HOURLY” (NON-
EXEMPT) EMPLOYEE A
SALARY?**

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**IF AN EMPLOYEE WANTS TO
WORK OVERTIME AND WILL
ACCEPT STRAIGHT TIME, CAN
HE/SHE WAIVE HIS/HER
RIGHT TO OVERTIME PAY?**

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**CAN I REDUCE AN
EMPLOYEE'S WAGES OR
SALARY?**

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**IS AN EMPLOYEE
REQUIRED TO GIVE TWO-
WEEKS' NOTICE?**

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**WHEN DO I HAVE TO PAY
FINAL WAGES TO A
TERMINATED
EMPLOYEE?**

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**DO I HAVE TO RECORD
EVERY HOURLY
EMPLOYEE'S TIME EVERY
DAY?**

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**DO I HAVE TO PAY FOR
ALL TIME WORKED IF
THE EMPLOYEE DOES
NOT REPORT THAT TIME
ON HIS/HER TIME CARD?**

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**HOW LONG DO I HAVE
TO KEEP MY WAGE AND
HOUR RECORDS?**

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**IF A WORKER AGREES IN
WRITING THAT HE/SHE IS
AN INDEPENDENT
CONTRACTOR, DO I HAVE
TO PAY HIM/HER
OVERTIME?**

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**CAN I GIVE EMPLOYEES
COMPENSATORY TIME
OFF RATHER THAN PAY
OVERTIME?**

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**HOW CAN I TREAT
PARTIAL DAY ABSENCES
OF AN EXEMPT
EMPLOYEE WITHOUT
IMPACTING HIS/HER
EXEMPT STATUS?**

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**HOW DO I ACCOUNT FOR
BONUSES WHEN
CALCULATING AN
EMPLOYEE'S OVERTIME
PAY?**

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**WHAT COMPENSATION
MAY BE EXCLUDED
WHEN COMPUTING
OVERTIME?**

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**HOW IS OVERTIME
COMPUTED FOR AN
EMPLOYEE PERFORMING
TWO OR MORE DIFFERENT
TYPES OF WORK FOR WHICH
DIFFERENT RATES ARE PAID?**

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**MAY AN EMPLOYEE ALSO
BE A VOLUNTEER?**

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**MAY I DEDUCT FOR
LOANS OR ADVANCES?**

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**IS TIME ON FAMILY AND
MEDICAL LEAVE PAID OR
UNPAID?**

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**MAY AN EMPLOYEE ON
FAMILY AND MEDICAL
LEAVE BE REQUIRED TO
USE ACCRUED VACATION
OR SICK PAY?**

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**WHAT BREAKS MUST I
PROVIDE FOR NURSING
MOTHERS?**

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Marijuana in the Workplace

Bob Tomaso
Brittany Falkowski

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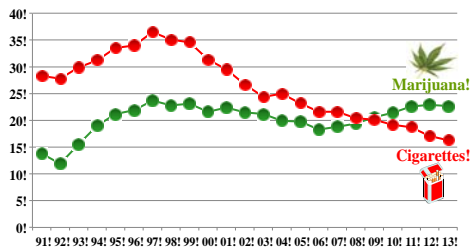
Marijuana Use in the U.S.

- Marijuana use is more common in states with medical marijuana laws
- Rates of marijuana abuse/dependence are higher in states with medical marijuana laws
- Accordingly to the National Survey on Drug Use and Health, in 2012:
 - 111 million Americans have used marijuana
 - 17% used in the last year
 - 504 million are daily users

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More Kids Smoke Marijuana Than Cigarettes



SOURCE: University of Michigan, 2013 Monitoring the Future Study.

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Effects of Marijuana

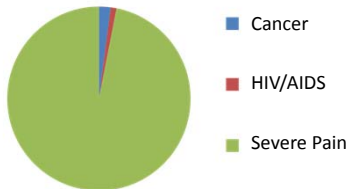
- Acute (present during intoxication)
 - Impairs short-term memory
 - Impairs attention, judgment, and other cognitive functions
 - Impairs coordination and balance
- Persistent (lasting longer than intoxication, but may not be permanent)
 - Impairs memory and learning skills
 - Sleep impairment

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Medical Marijuana

- Medical marijuana users in Colorado reported the following reasons for their use:



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Marijuana and Federal Law

- Controlled Substances Act
 - Marijuana is a Schedule I drug
 - “No currently accepted medical use”
 - A person can be charged with federal marijuana violations even if obeying state regulations
 - Rare, but could happen
- Drug-Free Workplace Act
 - Requires some employers to maintain a drug-free workplace

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Marijuana and State Law

- Illinois
 - Compassionate Use of Medical Cannabis Pilot Program Act
 - Permits marijuana use to treat 42 specific medical conditions
 - Does not prohibit enforcement of a drug-testing or drug-free workplace policy
- Missouri
 - Marijuana use is illegal

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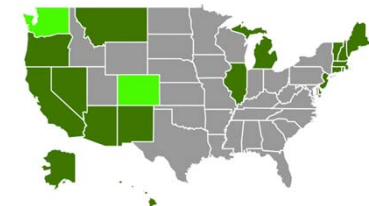
Marijuana and State Law

- All States
 - Employers are not required under any state law to:
 - Permit drug use in the workplace, or
 - Tolerate employees who report to work under the influence

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The Legalization of Marijuana



Marijuana Legalization Status
■ Medical marijuana legalized
■ Marijuana legalized for medical/recreational use
■ No laws legalizing marijuana

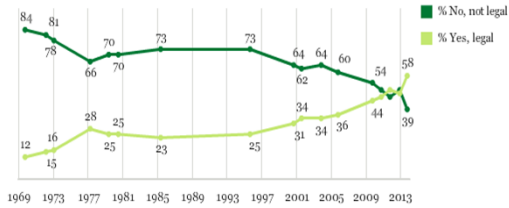
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Public Opinion on Legalization

Americans' Views on Legalizing Marijuana

Do you think the use of marijuana should be made legal, or not?



GALLUP

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Questions

- Can we “randomly” test someone who we know has a medical marijuana card?
- What if the test is based on “reasonable suspicion”?

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Questions

- Can we discharge someone who tests positive for marijuana if he used marijuana in Colorado where recreational use is lawful?

– See *Coats v. Dish Network, LLC*, 303 P.2d 147 (Colo. App. 2013)

– See *Ross v. RagingWire Telecommc'ns, Inc.*, 174 P.3d 200 (Cal. 2008)

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Questions

- Do we have to reimburse for medical marijuana if prescribed by a workers' compensation doctor?

– See *Vialpando v. Ben's Automotive Services and Redwood Fire & Casualty*, 331 P.3d 975 (N.M. Ct. App. 2014)

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THANK YOU

Seminar materials can be found on the firm's website...

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under "Business Insights"

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