Our second topic in our Minnesota Legislative update series focuses on Minnesota’s recreational cannabis law and how it relates to employers. These new regulations went into effect on August 1, 2023, and we recommend that you work with your legal counsel, PEO, employer organization and/or your drug testing company to update your company policies.

These regulations apply to three areas for employers, including drug and alcohol testing, drug-free workplace policies, and off-duty conduct.

**What actions should organizations take to be compliant?**

* Train managers and supervisors to refrain from inquiring about an employee’s marijuana use.
* Be aware of testing restrictions.
* Review and update existing related policies and practices for compliance.
* Do not discriminate or retaliate against any employee for off-duty and off-premises use of marijuana, or for disclosing their use of marijuana when not on company property or conducting company business.

**Employer drug-free workplaces**

* Employers can prohibit employees from using or being impaired by cannabis during work.
  + Employers may discipline, discharge, or take other adverse personnel action against an employee for cannabis use, impairment, sale, or transfer while the employee is working; while the employee is on the employer’s premises; or while the employee is operating the employer’s vehicle, machinery, or equipment if the employer has enacted work rules regarding cannabis and cannabis testing in a DATWA-compliant policy.
  + Employers may impose discipline if, as the result of consuming cannabis, the employee “does not possess the clearness of intellect and control of self that the employee otherwise would have,” or the employee has a confirmed positive result on a cannabis test. Employers are also allowed to take action if authorized under state or federal law or regulations, or if failing to do so would cause the employer to lose a federal monetary or licensing-related benefit.

**Updates to the Drug and Alcohol Testing in the Workplace Act**

* This law specifies that cannabis is no longer a “drug” under the Drug and Alcohol Testing in the Workplace Act (DATWA), but testing is permitted through a new limited category of “cannabis testing.”
  + Certain job positions will remain subject to DATWA requirements and are exempt from the new cannabis testing rules. These positions include: safety sensitive positions; peace officers; firefighters; positions requiring face-to-face care, training, education, supervision, counseling, consultation or medical assistance to children, vulnerable adults, or healthcare patients; positions requiring a commercial driver’s license or subject to certain federal or state motor vehicle regulations requiring testing; employment positions funded by a federal grant; and positions for which state or federal law requires cannabis testing.
  + For all other positions which are not safety-sensitive and do not fall under another exemption, employers are prohibited from requiring cannabis testing for the sole purpose of determining the presence or absence of cannabis. This restriction includes pre-employment or random testing for cannabis.
  + Employers may conduct reasonable suspicion testing if an employee (1) is suspected to be under the influence of drugs; (2) has violated the employer’s written rules prohibiting the use, possession, sale or transfer of drugs, alcohol or cannabis during work; (3) has sustained a personal injury or caused another employee to sustain a personal injury; or (4) has caused a work related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work related accident.

**More resources:**

* [Jackson Lewis: Minnesota Legalizes Recreational Marijuana](https://www.jacksonlewis.com/insights/minnesota-legalizes-recreational-marijuana-protects-duty-use)