

OCTOBER 2022 NEWSLETTER

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BUSINESS LAW: **CANNABIS TESTING OF EMPLOYEES**

1. AWARDS:

Pozzuolo Rodden Pozzuolo, P.C., is pleased to announce that the Selection Committee of the National Law Journal has reviewed over 55,000 attorneys and has chosen Joseph R. Pozzuolo, Esquire as a member of the 2022 Lawyers of Distinction.

Pozzuolo Rodden Pozzuolo, P.C., is pleased to announce that Joseph R. Pozzuolo has been awarded the 2022 Martindale-Hubbel AV Preeminent rating for the Highest Level of Professional Excellence – the highest Peer Review Rating achievable recognizing lawyers for their strong legal ability and high ethical standards. These rating are used to identify, evaluate and select the most appropriate lawyers by attorneys seeking to refer colleagues as well as individuals looking for legal counsel. This designation is trusted worldwide by seekers of legal services and held only by 10 percent of all attorneys.

2. SEMINARS:

Jeffrey S. Pozzuolo, Esquire recently presented a CPE seminar titled “Business Succession Planning and Buy-Sell Agreements” to the Montgomery County Society of Certified Public Accountants.

Speakers are available upon request to Joseph R. Pozzuolo at Joe@Pozzuolo.com

3. BLOGS:

The following are a few of the business, tax, employment, estate planning and business litigation blogs posted on our main website www.pozzuolo.com:

- a. Choosing A Retirement Plan;
- b. Living Wills and Power of Attorney; and,
- c. The Use Of A Will In An Estate Plan.

Please visit our website www.pozzuolo.com for more information on these and other relevant business, tax, estate, business litigation and employment topics.

BUSINESS LAW **CANNABIS TESTING OF EMPLOYEES**

With cannabis becoming legal in many states, both recreationally and/or medically, and the Federal Government seeming more and more likely to decriminalize it, many employers are asking our attorneys how to proceed with the drug testing of employees for cannabis use.

Generally speaking, drug testing by employers is controlled by state and local laws. As a general rule, employees cannot be fired for using medical cannabis outside of work hours if it is legal in their state. Note, however, that you can be fired if your employer can prove that you are intoxicated at work or consuming cannabis at your place of employment. In most, if not all states, employees will face adverse employment action if they are intoxicated at work during work hours - even if cannabis is legal in that state.

A.) PENNSYLVANIA:

As a brief, non-comprehensive overview, in Pennsylvania, employers are permitted to test employees and prospective employees for cannabis use. However, the City of Philadelphia prohibits most employers from testing prospective employees for cannabis use but does allow testing once someone has been hired. As with most laws or regulations, there are certain exceptions. For example, a Philadelphia City Council ordinance specifically states that the following jobs can test individuals who are applying for the following jobs:

- Law enforcement;
- Jobs requiring a commercial driver's license;
- Jobs supervising children, medical patients, and/or disabled individuals;
- Jobs that could have an impact on the health and safety of others;
- Jobs that require drug testing under state or federal law, and;
- Jobs that require pre-employment drug testing due to a collective-bargaining agreement.

B.) NEW JERSEY:

In New Jersey, where recreational cannabis is now legal, state law prevents “adverse employment consequences” because of a positive cannabis test. New Jersey law prevents individuals from being fired, denied a job, or prevented from obtaining a professional license in the state if the individual has a cannabis related record. However, the New Jersey Cannabis Regulatory Enforcement Assistance and Marketplace Modernization Act does provide certain carve outs that allow employers to test employees for cannabis usage. Specifically, New Jersey employers can test employees in the following situations:

- If the employer has a reasonable suspicion that an employee is using cannabis while performing work related responsibilities;
- If an employer notes observable signs of an employee’s intoxication;
- After a work-related accident during an investigation of said accident;
- Random drug testing, and;
- Pre-employment or regular screening of current employees to determine employee use of cannabis during work hours.

C.) CONCLUSION:

It must be noted that cannabis law is developing at a very fast pace, with more and more states making cannabis use legal, both recreationally and/or medically. Cannabis law will continue to evolve and change at a rapid pace, especially if the Federal Government makes cannabis use legal. With the very nuanced, rapidly evolving cannabis laws in our country and local area, it is important that your business has a solid, up-to-date policy in place relating to pre-employment and employment cannabis testing.

Please contact our office to discuss how best to implement a drug screening policy for your specific business situation and location.

This newsletter is courtesy of Pozzuolo Rodden Pozzuolo, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at INFO@POZZUOLO.COM.