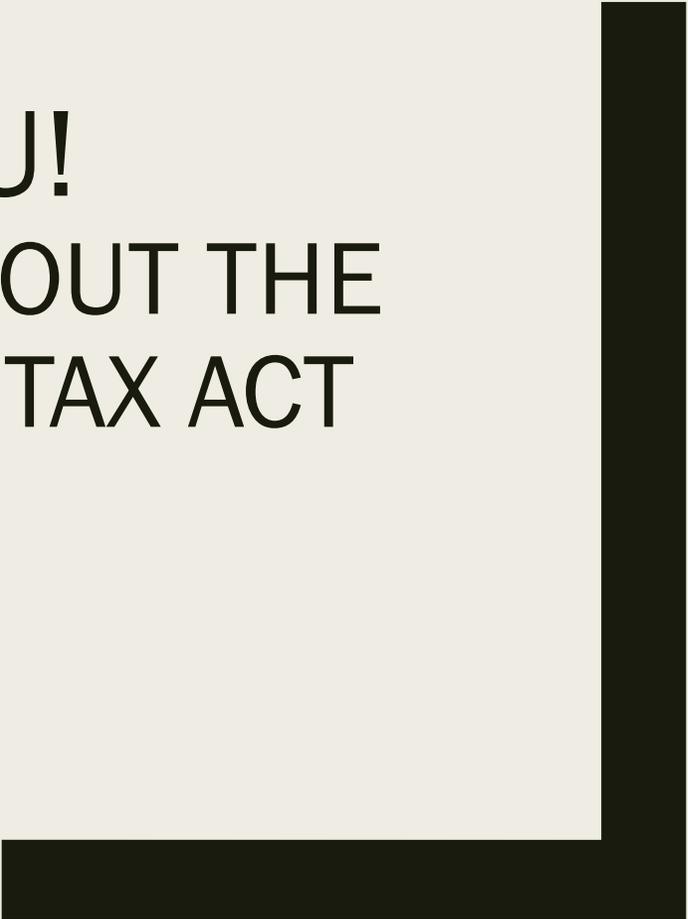


CANNABIS AND YOU!
WHAT YOU SHOULD KNOW ABOUT THE
CANNABIS REGULATION AND TAX ACT
(“CRTA”)



Miller, Hall & Triggs, LLC presenters

■ Scott Brunton -

scott.brunton@mhtlaw.com

■ Joshua Herman -

joshua.herman@mhtlaw.com

■ Megan Yentes -

megan.yentes@mhtlaw.com

This presentation does not create an attorney client privilege or constitute legal advice.

This presentation was originally given in-person and may be considered advertising.

Recreational Cannabis: The Basics

- Places restrictions on how much cannabis a person may possess
- Places restrictions on where cannabis may be consumed
- Imposes operating restrictions on cannabis establishments
 - *Dispensaries, Cultivation Centers, Infusers, Craft Growers, Transporters*
- Medical cannabis card holders may “home grow” up to five plants
- Taxes at both the local and state level
- Creates automatic expungements for certain cannabis offenses
- Allows any person, business, or landlord to prohibit the use of cannabis on their private property.
- Authorizes municipalities to “opt out”
- Gives municipalities broad authority to *regulate* cannabis businesses
- Affords protections to both employers and employees

Taxation/Revenue

- The Act was passed with the intent to regulate cannabis in a manner similar to alcohol, and to allow law enforcement to focus on violent and property crimes, while also generating revenue.
- Projected Revenues:
 - Department of Revenue estimates new cannabis industry will generate over \$57 million in tax revenue and licensing fees in Fiscal Year 2020
 - Also projects the state will generate \$140.5 million in tax revenue for Fiscal Year 2021 (not including licensing fees).
 - Department of Revenue has projected that the tax revenue will continue to grow and could reach \$375.5 million by 2024.

Prohibitions on Possession/Use

- No smoking cannabis in any “public place”, in a healthcare facility, or any other place where smoking is prohibited under “Smoke Free Illinois Act.”
- “Public Place” means:
 - *outdoors and in public buildings. A private residence is not a public place, unless used for childcare, foster care or social services*
 - *where a person could reasonably expect to be observed by others*
 - *all or parts of buildings owned in whole or in part or leased by State or local government*
- No use of motor vehicle while using or under the influence of cannabis
- Possession limits for Illinois resident who are 21 years or older:
 - *30g of cannabis flower*
 - *500 mg or less of THC of cannabis-infused products*
 - *5g of cannabis product in concentrated form*
- A person who is under 21 years of age may not possess cannabis

Local (City) Regulation of Recreational Cannabis

- Regulation or Prohibition of Recreational Cannabis Businesses
 - *Zoning Regulation*
 - *Comparison to Medical Cannabis*

- Use of Recreational Cannabis in Public Places
 - *Defined by CRTA*
 - *Can Completely Prohibit in Any Public Places*
 - *Municipal Authority to Create Exceptions*

- Taxation
 - *Revenues from State*
 - *Revenues from City Tax on Retail Sales*

Employment Law

Presented by

Joshua Herman



Joshua.herman@mhtlaw.com

Before Jan 1, 2020

- State* and Federal law aligned
 - *cannabis illegal controlled substance that is illegal to possess, use, consume, sell, dispense, manufacture/grow/cultivate, etc.*
 - *Whether at work or at home*
- Employers can generally discipline or terminate for positive drug test*

* If not related to lawful medicinal use

After

Jan 1, 2020

- In Illinois, cannabis is a lawful product for adults over 21
- Federally, cannabis remains a controlled substance
- How can employers balance the two?

Illinois Law: Right to Privacy in the Workplace

- CRTA Amends RPWA to make cannabis a lawful product for adults over the age of 21
- RPWA prohibits taking adverse employment action against employee for use of lawful product off premises, during non-working hours and while not on-call.
 - *EG:*
 - *Tobacco*
 - *Alcohol*
 - *And, now...Cannabis*

CRTA allows

- Drug testing employees under good faith belief that employee used, possessed or was under the influence at work. (Employees must be given the option of challenging a discipline for cannabis use)
 - *(May have random tests too, but must be random)*
- Disciplining for use, possession, or impairment at work, while performing job duties, or while on call – if prohibited by employer
- CRTA protects employer from liability to a third party if the employer neither knew nor had reason to know that the employee was impaired.

Discipline Allowed by Illinois Law

- Cannabis Misconduct at the workplace

May absolutely discipline any of the following if in violation of workplace rules

- *Use*
- *Possession*
- *Influence*

Zero Tolerance?

- CRTA allows reasonable zero tolerance policies and should be interpreted broadly to protect workplace safety.
- However, no definition of zero tolerance and, when CRTA is considered with RPWA, likely cannot have zero tolerance policy that punishes consumption that **didn't enter the work place in any way**
 - *Except CDL holders*
- **Disciplining a positive drug test without any factual basis to argue use occurred at or affected work risks exposure.**

Does positive drug test mean employee was under the influence?

Does positive drug test mean employee under the influence?

- Not necessarily.
- Use signs and symptoms to identify impairment in workplace
 - *Train,*
 - *Identify,*
 - *Document*

Signs and Symptoms of Cannabis Impairment

- Bloodshot eyes
- Increased appetite
- Lack of motivation
- Weight gain
- Nervous or paranoid behavior
- Impaired coordination
- Slowed reaction time, misjudges time
- Dry mouth
- Dizziness
- Memory impairment
- Unusual speech, demeanor
- Lack of motivation
- Anxiety
- Impaired judgment
- Distorted perception, confusion, lacks focus
- Unusually talkative
- Relaxed state, sleepiness
- Feeling “high” or euphoria
- Slowed or poor coordination
- Negligence or carelessness,
- Disregard for the safety of others
- Involvement in a serious accident

Train, Identify, Document

What about the Drug Free Workplace Act?

- Requires federal grant recipients and certain federal contractors to adopt **reasonable rules and policies to ensure that the workplace is free from:**
 - *Manufacture,*
 - *Sale,*
 - *Distribution,*
 - *Possession,*
 - *Use,*
 - *Influence of*
 - *Illegal drugs*
- Employer **must** discipline an employee convicted of doing any of the foregoing in the workplace or refer to rehab/substance abuse program

Federal Crime?

- Yes.

- But...

Federal Crime?

- Yes.

- You are not the police*

What about the Drug Free Workplace Act?

■ DOES NOT REQUIRE

- DRUG TESTS
- DISCIPLINE FOR POSITIVE RESULTS

Zero Tolerance? - Safety Sensitive Employees?

- CRTA allows reasonable zero tolerance policies and should be interpreted broadly to protect workplace safety.
- An “absolute” zero tolerance policy (prohibiting any thc from being in the body at work) may be feasible for safety sensitive employees – but this is an aggressive interpretation of the law.
- Consider 2 strikes?

Best Practices (See handout)

- Update and Implement policies
 - *Clarify prohibited conduct*
 - *Define procedures*
 - *Identify special employees*
- Drug testing
 - *Random/Specific articulable impairment/reason to think used, possessed, or impaired by*
- Training
 - *New policies, responsibilities*
 - *Signs and symptoms*
 - *Law*

More Questions?

Contact Miller, Hall & Triggs, LLC - (309) 671-9600

- Scott Brunton

- scott.brunton@mhtlaw.com

- Joshua Herman

- joshua.herman@mhtlaw.com

- Megan Yentes

- megan.yentes@mhtlaw.com