



## Eye On The Law

### Drug Use in the Workplace? COVID-19 Contact Tracing Devices?

#### DRUG USE IN THE WORKPLACE

In the past, it seemed obvious that an employee who was under the influence of drugs at work could be terminated without any legal repercussions. These days, whether and when you can terminate an employee who is under the influence is not quite so clear.

In fact, if the Connecticut Legislature's Labor Committee has its way, employers *could be sued* by employees *for having a policy which prohibits having or using marijuana* in the workplace. **On February 4, 2021, a public hearing was held on [House Bill 6377](#), AN ACT CONCERNING LABOR PEACE AGREEMENTS AND A MODERN AND EQUITABLE CANNABIS WORKFORCE.** Section 3 of the bill, if passed, would require employers who have such a policy to prove that the policy is "directly related to a clear business necessity." Under the language of **Section 3, employers are also prohibited from penalizing employees who use cannabis outside the workplace.**

The Connecticut Business and Industry Association ("**CBIA**") *testified on behalf of its employer members against the bill and pointed out that, even in some states where marijuana is legal, employers are still permitted to maintain a drug-free workplace:*

Washington - employers can screen for marijuana and reject applicants who test positive.

Massachusetts - legalized recreational marijuana does not protect employees or job applicants who test positive for marijuana use.

**Alternatively, other states/cities are not permitted to have a drug-free workplace with some exceptions:**

Nevada - effective January 1 employers are prohibited from considering pre-employment marijuana test results in deciding whether to hire prospective employees.

New York City – later in 2021 employers will be prohibited from conducting pre-employment marijuana tests altogether.

Governor Lamont seems agreeable to changing Connecticut's laws ***to make marijuana use more acceptable. Earlier this month, he presented his budget to the Legislature which includes language legalizing recreational marijuana.*** With members of the Legislature and the Governor focused on expanding acceptance of marijuana use, it is questionable whether Connecticut employers will be allowed to maintain policies that exclude current and prospective employees who test positive for marijuana use from the workplace.

#### COVID-19 CONTACT TRACING – WILL TRACKING DEVICES BE PERMISSIBLE?

Employers are still experimenting with COVID-19 contact tracing. The CDC's contact-tracing rules, which require employers to identify employees who may have been exposed to an infected employee, can be very difficult to implement as a practical matter. ***The CDC recommends that employers identify employees who worked within 6 feet of an infected coworker for a period of 15 minutes during any 24-hour period in the 48 hours prior to the time the infected person showed symptoms or, if the infected person was asymptomatic, the 48 hours before the person was tested.***

One large employer was able to greatly simplify contact tracing by using a novel approach. The NBA required professional athletes and some staff members to wear a ***device during all team activities which recorded the distance and duration of in-person interactions with others who are wearing the sensor*** and can help determine who was in close contact with an infected person. ***The NBA successfully used this approach during last year's playoffs and reportedly had no significant Covid issues throughout the playoffs.*** The NFL also used the sensors during its season but did so on a voluntary basis.

***Could this type of device monitoring be something other employers (especially ones whose employees have significant customer interaction) attempt to implement in the future?***

***If you have concerns about this or any other workplace or litigation issue, please contact David Ryan at [david.ryan@ryan-ryan.net](mailto:david.ryan@ryan-ryan.net) or by telephone at 860.460.7139 (mobile) or 203.752.9794 (office).***

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