

Drugs, Violence, and Vaping: Drafting Employment Policies in the Age of Recreational Marijuana

Overview

- Review considerations in drafting effective Substance Abuse Policies.
- Understand state of Michigan and federal laws concerning smoking, vaping and fragrances in the workplace.
- Learn how to craft effective violence prevention policies and procedures in light of state and federal law protections.

Drafting Effective Substance Abuse Policies



The State of Marijuana Under Federal Law

- Currently: The Controlled Substances Act classifies marijuana as a Schedule I drug. Schedule I drugs are considered to “lack any accepted medical use;” therefore, federal law prohibits marijuana’s manufacture, distribution, and possession.
- Coming: A wave of legislation being introduced that would affect the federal government’s ability to enforce the Controlled Substances Act in states that have legalized marijuana.

The State of Marijuana Across the Country

- Medical Marijuana is now legal in 33 states, while recreational marijuana is legal in 10 states (Alaska, California, Colorado, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont and Washington).
- A recent survey found that 1 in 7 adult Americans had used marijuana in 2017

The State of the Law in Michigan: Medical v. Recreational Marijuana



The State of the Law in Michigan: Medical v. Recreational Marijuana

- Employer rights and responsibilities.
 - MMMA: “An employer is not required to accommodate the ingestion of marijuana in any workplace or any employee working under the influence of marijuana.”
 - MRTMA: employer not required to “permit or accommodate conduct otherwise allowed by this act in any workplace or on the employer’s property;” nor does it “prohibit an employer from disciplining an employee for a workplace drug policy or working under the influence of marijuana.”
 - Case law

The Zero Tolerance Policy – What to Consider

- Growing number of marijuana users = reduction of pool of candidates
- Industry and safety considerations
- Company discretion/exceptions
- Public perception and the progressive workplace

The Zero Tolerance Policy – What to Consider

- Medical marijuana and employee rights
 - ADA and FMLA protections for legal vs. illegal use.
 - Recovering and recovered substance abusers may be considered “disabled”.
 - Other state and federal laws that may be implicated.
 - Potential for a claim under the Michigan Persons with Disabilities Civil Rights Act, although there is no specific accommodation provision.

Required Drug Testing



Drug Testing and the Reasonable Suspicion Carve-Out

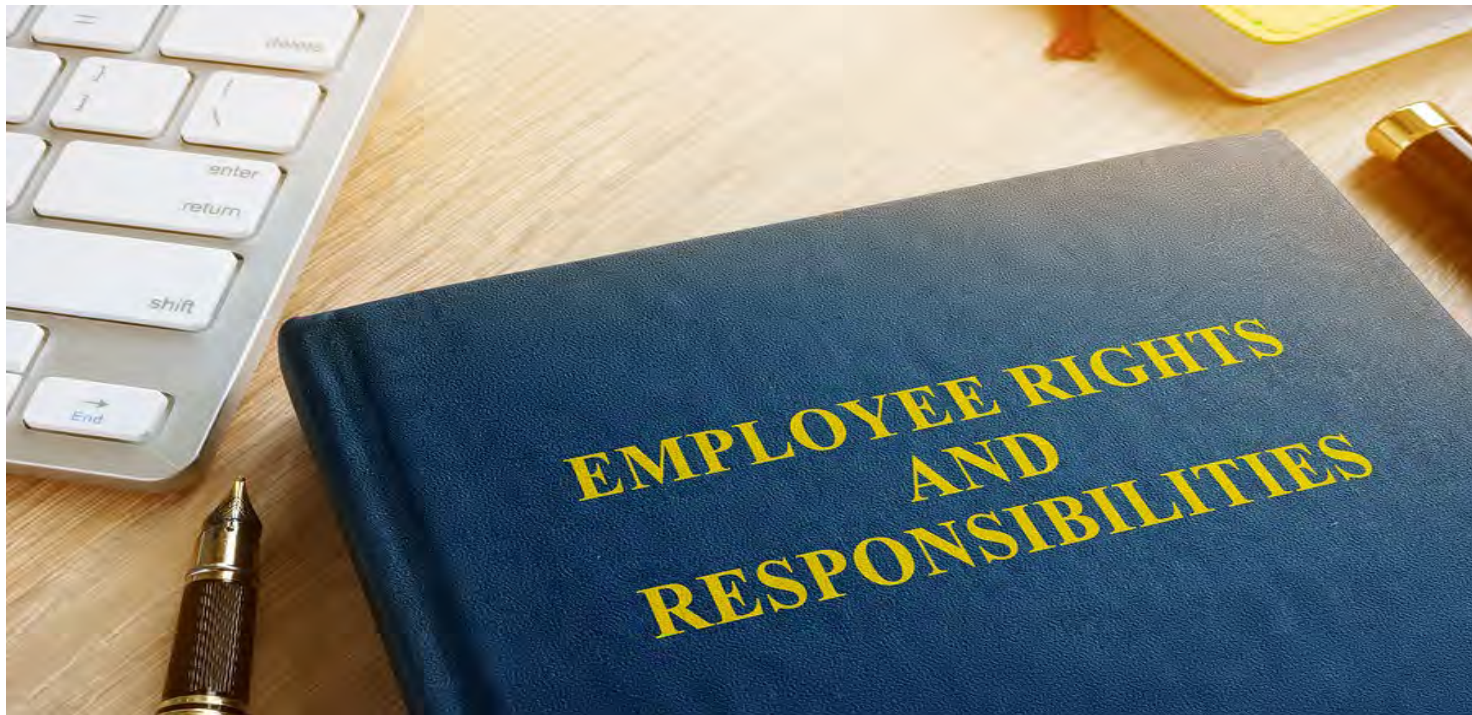
Drug testing requirements.

- Pre-employment.
- Random testing.
- Post injury or accident (upon reasonable suspicion).
- As required by law (for example, under certain state Workers' Compensation laws or the U.S. Department of Transportation requirements).
- Consequences of refusing to submit to testing or positive test results.

Other Drugs in the Workplace

- Over-the-counter drugs
- Prescriptions
- Legal drugs and intoxicants
 - Marijuana
 - Alcohol

Smoking, Vaping and Friendly Fragrance Policies



No-Smoking Policies

- Restricted areas
- Outright bans
- Company vehicles
- State law protections
- Federal law



No-Smoking Policies – What to Include

- Smoke free workplaces
- If offering designated smoking areas, be sure to comply with all applicable laws (OSHA, MIOSHA, etc.)
- Offer and promote tobacco cessation support

Vaping in the Workplace



Friendly Fragrance Policies

- Drafting effective policies
 - Incorporate into existing hygiene policy or separate policy?
- Necessary as an ADA accommodation?
 - Requests related to underlying medical conditions should be evaluated using the interactive process.

Drafting Violence Prevention Policies



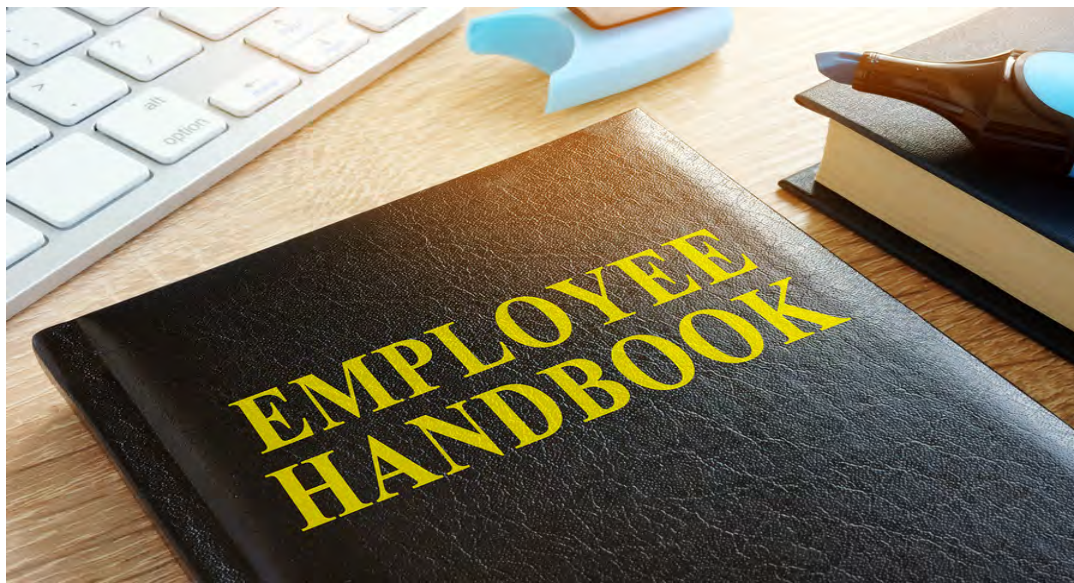
How to Address Guns in the Workplace



Prevention and Complaint Procedures



Active Threat Drills: Necessary in Today's Age of the Active Shooter?



Conclusion

- Staying up to date on changes in the law: now more important than ever.
- Taking a stance on gray areas – consistency is key.
- Protecting employee health and safety should always be a priority.