



Drugs in the Workplace: Getting Into the Weeds of State and Federal Drug Laws for Employers



Dylan A. Farmer

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PRESENTATION FRAMEWORK

- **Legal Considerations**
 - ADA/Chapter 21 of the Texas Labor Code
- **Drafting a Drug Testing Policy**
 - Basic Considerations
 - Prescription Drugs
 - Medical/Legalized Marijuana
- **Special Considerations**
 - Federal Laws Requiring Testing
 - Texas Workers' Compensation Act

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TWO TYPES OF LAWS

- **Laws requiring affirmative anti-drug policies and workplace drug testing**
 - *i.e.*, laws that require or permit employers to act
- **Laws protecting workers' rights**
 - *i.e.*, laws that prohibit employers from acting
- ***Drug testing policies must respect both considerations***



PROHIBITIVE LAWS

- **Americans with Disabilities Act**
- **Chapter 21 of the Texas Labor Code**
- **FMLA**





PROHIBITIVE LAWS (CONT'D)

- Americans with Disabilities Act
 - Cannot discriminate against/must reasonably accommodate **qualified individuals with a disability**.
 - Exception for individuals “currently engaging in the illegal use of drugs” when the employer “acts on the basis of such use.”



PROHIBITIVE LAWS (CONT'D)

- *Shirley v. Precision Castparts Corp.* (5th Cir. 2013)



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