



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



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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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First appeared as part of the conference materials for the 26<sup>th</sup> Annual Labor and Employment Law Conference session "Drugs in the Workplace"