Engage PEO Client Alert: New Jersey

New Workplace Impairment Guidance

WHAT'S NEW: The New Jersey Cannabis Regulatory Commission Has Provided Guidance on "Workplace Impairment"

WHAT IT MEANS: The New Jersey Cannabis Regulation Commission ("NJ CRD") issued guidance advising employers of best practices related to assessing potential workplace impairment by an employee. The NJ CRD advises that employers should have protocols in place to document employee behavior and other signs of impairment as evidence to support employers' reasonable suspicions of an employee's impairment. Once there is sufficient evidence in support of a reasonable suspicion of impairment, then an employer may conduct a drug screen of the employee to determine whether or not the employee is or has recently been under the influence of drugs.

WHY DOES IT MATTER? NJ employers may not subject an employee to an adverse action solely because the employee tests positive for cannabis, whose use is permitted; however, employers have the right to maintain a drug-free workplace. The best practices articulated by the NJ CRD allow employers to maintain a drug-free workplace while permitting employees to use cannabis so long as doing so does not impair their functionality at work.

NEXT STEPS FOR EMPLOYERS: Pending issuance of Workplace Impairment Recognition Expert certification standards, employers may designate an interim staff member to assist in making determinations regarding suspected cannabis use during an employee's work hours. This person should be sufficiently trained to determine impairment and should be qualified to complete a Reasonable Suspicion Observation Report (the "Report"); the person may also be a third-party contractor.

The Report documents:

- Behavior;
- Physical Signs; and
- Evidence

in support of the employer's determination that the employee is reasonably suspected of being under the influence during the employee's prescribed work hours.

Physical signs or evidence that may be used to establish reasonable suspicion of cannabis use or impairment at work include:

- a cognitive impairment test;
- a scientifically valid, objective, consistently repeatable, standardized automated test of an employee's impairment; and/or
- an ocular scan.

The Report should include input from the employee's manager or supervisor or another employee at the manager or supervisor level and an interim staff member who has been designated to assist in making determinations regarding whether an employee is reasonably suspected of being impaired during their prescribed work hours, or, alternatively, the input of a second manager or supervisor.