

JO DAVIESS COUNTY, ILLINOIS
CANNABIS, DRUG, AND ALCOHOL USE/ABUSE POLICY

Background:

The Cannabis Regulation and Tax Act

On June 25, 2019, Governor J.B. Pritzker signed into law the Cannabis Regulation and Tax Act (CRTA) that decriminalizes the use of marijuana by adults age 21 and older and becomes effective on January 1, 2020. The CRTA incorporates provisions of the state's medical marijuana law and specifically provides that nothing in the CRTA shall be construed to enhance or diminish protections afforded by any other law, including but not limited to the Compassionate Use of Medical Cannabis Pilot Program Act.

On December 4, 2019, Governor Pritzker signed a bill amending the CRTA. Public Act 101-0593 went into effect upon signature. The amendments clarify several confusing provisions of the CRTA. One notable clarification provides that an employer may withdraw a job offer based on a failed drug test. This implies that pre-employment/post-offer drug testing by private employers is allowed.

The Compassionate Use of Medical Cannabis Program Act

On January 1, 2014, the Compassionate Use of Medical Cannabis Pilot Program Act (Medical Cannabis Program Act or MCPA) went into effect. It was amended on August 9, 2019, to remove the repeal language and make the law permanent. The MCPA establishes a patient registry program and protects registered qualifying patients, and their registered designated caregivers and health-care professionals, from "arrest, prosecution, or denial of any right or privilege." The list of qualifying medical conditions has been expanded to include over 50 conditions, including migraines, PTSD and any condition for which an opioid has been or could be prescribed by a physician. The MCPA was also expanded to allow nurse practitioners and physicians' assistants make the determination regarding a patient's qualifying status.

The Right to Privacy in the Workplace Act

The Cannabis Regulation and Tax Act amended the Right to Privacy in the Workplace Act to read, "Except as otherwise specifically provided by law, including Section 10-50 of the Cannabis Regulation and Tax Act,...it shall be unlawful for an County to refuse to hire or to discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual uses lawful products off the premises of the County during nonworking and non-call hours." The definition of on-call under this Act is identical to the definition found in the CRTA provided below.

The Agriculture Improvement Act of 2018

The Agriculture Improvement Act of 2018, also known as the 2018 Farm Bill, was signed into law by President Trump on December 20, 2018. The Farm Bill legalized the cultivation of "hemp," defined as cannabis and cannabis derivatives with less than 0.3 percent THC. Hemp was removed from the definition of marijuana in the Controlled Substances Act. This is the first time that any form of marijuana was removed from the Controlled Substances Act.

Intent:

Jo Daviess County (hereafter referred to as the "County") is concerned about the ultimate effects of the use of cannabis, alcohol and illegal drugs upon the health and safety of its employees and the public. We recognize that studies show that alcohol and drug abuse leads to increased accidents and medical claims. Employees who abuse drugs and alcohol present a danger to themselves, their fellow employees, the County, and the public at large. In addition, the increased medical costs incurred by employees who use/abuse drugs and/or alcohol and the associated decreased productivity of these

P2020-1

individuals, because of accidents, absenteeism and turnover adversely affect achievement of the County's mission and goals.

The County recognizes that the state legislature has accepted that modern medical research confirms the beneficial uses of cannabis in treating or alleviating the pain, nausea and other symptoms associated with a variety of debilitating medical conditions. For these reasons, the State of Illinois has decriminalized the use of marijuana both for medical and recreational purposes. The County also recognizes that under federal law, marijuana is still illegal. The United States Drug Enforcement Agency lists marijuana as a Schedule I drug under the Controlled Substances Act. Schedule I drugs are defined as having no approved medical use and a high potential for abuse.

The County recognizes its obligations and responsibilities under these conflicting laws to implement a reasonable drug free workplace policy to ensure the safety of employees and the public at large while protecting the rights of all employees. The County will not penalize an employee or applicant solely for his/her status as a registered qualifying patient or registered designated caregiver under the Compassionate Use of Medical Cannabis Program Act, unless failing to do so would put the County in violation of federal law or unless failing to do so would cause it to lose a monetary or licensing-related benefit under federal law or rules. The County prohibits the use and storage of both medical and recreational cannabis on its property, at all workplaces and in any County-owned vehicles.

No part of this policy, nor any of the procedures hereunder, guarantees employment, continued employment, or terms or conditions of employment or limits in any way the County's rights to manage its workplace or discipline employees.

Definitions:

For purposes of this policy, the following terms shall have the following meanings:

- A. 'Premises' shall include all work sites, work areas, property owned or leased by the County or vehicles owned, operated, leased, or under the control of the [insert name of entity]. Privately-owned vehicles parked or operated on property owned, leased or managed by the County is also included under the definition.
- B. 'The County's time' shall include all times during which an employee is on the County's premises, meal and break times on or off the County's premises, or performing work off the premises for the benefit of the County or as a representative of the County.
- C. 'On-call' for purposes of the Cannabis Regulation and Tax Act means when an employee is scheduled with at least 24 hours' notice by his or her County to be on standby or otherwise responsible for performing tasks related to his or her employment either at the County's premises or other previously designated location by his or her County or supervisor to perform a work-related task.
- D. 'Legal drug' means any substance the possession or sale of which is not prohibited by law, including prescription drugs that have been prescribed for the employee, over-the-counter drugs and (after January 1, 2020) cannabis as outlined in the Cannabis Regulation and Tax Act.
- E. 'Illegal drug' means any controlled substance the possession or sale of which is prohibited by law.

P2020-1

- F. 'Cannabis' or 'Marijuana' is a mixture of dried, shredded leaves, stems, seeds and flowers of the hemp plant, *Cannabis sativa*. The main active chemical in cannabis is tetrahydrocannabinol (THC), a psychoactive ingredient that produces a "high" or feeling of being "stoned." The strength of the cannabis or marijuana is correlated to the amount and potency of the THC it contains.
- G. 'Cannabidiol' or 'CBD' is one of over 60 different cannabinoid compounds in marijuana. CBD a non-psychoactive ingredient of cannabis and does not make a person feel "high" or "stoned." CBD is used to provide relief from chronic pain, anxiety, inflammation and epilepsy and its benefits are still being researched. Currently, there are no uniform standards for production of CBD so it is very possible that a CBD product contains small amounts of THC that would show up on a drug test. Such a test result would violate the County's drug-free workplace policy.
- H. 'Substance' means any alcohol, drugs, or other substances (whether ingested, inhaled, injected subcutaneously, or otherwise) that have known mind altering or function-altering effects upon the human body or that impair one's ability to safely perform his or her work, specifically including, but not limited to, prescription drugs and over-the-counter medications; alcohol, drugs, and other substances made illegal under federal or state law; "synthetic or designer" drugs; illegal inhalants; "look-alike" drugs; amphetamines; cannabinoids (marijuana and hashish); cocaine; phencyclidine (PCP), and opiates; and any drugs or other substances referenced in Schedule I through V of 21 C.F.R. Part 1308 (whether or not such drugs or other substances are narcotics).
- I. 'Traceable in the employee's system' means that the results of a laboratory's analysis of the employee's urine, saliva, breath or blood specimen is positive for the tested substance.
- J. 'Reasonable suspicion of impairment' means that the County's representatives have observed and in good faith can describe specific, articulable symptoms of an employee while working that decrease or lessen his or her performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, breath, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, negligence or carelessness in operating equipment or machinery, disregard for the safety of the employee or others, or involvement in an accident that results in serious damage to equipment or property, disruption of a production or manufacturing process, or carelessness that results in any injury to the employee or others, or detection of a prohibited substance in the area where an employee has/had been working. A registered qualifying user of medical cannabis under the Compassionate Use of Medical Cannabis Program Act must first be given a reasonable opportunity to contest the basis of the suspected impairment before being subject to discipline based on the County's good faith belief of impairment. A user of cannabis under the Cannabis Regulation and Tax Act must also first be given a reasonable opportunity to contest the basis of the suspected impairment before being subject to discipline based on the County's good faith belief of impairment.
- K. 'Under the influence' means the condition wherein any of the body's sensory, cognitive, or motor functions or capabilities is altered, impaired, diminished, or affected due to drugs or alcohol. This also means the detectable presence of Substance(s) within the body, regardless of when or where it (they) may have been consumed, having an alcohol concentration within the violation range specified by the laws of the State of Illinois, and/or having a positive test for any other Substance(s). With respect to employees subject to the Federal Motor Carrier Safety Administration (FMCSA) regulations, U.S. Department of Transportation regulations, or

P2020-1

performing safety-sensitive functions including [insert position descriptions, e.g. those employees who drive commercial motor vehicles, operate or repair heavy or large mobile equipment, police officers, correctional officers, firefighters, EMTs and health care providers with direct patient care], under the influence of alcohol is defined in accordance with FMCSA regulations as having an alcohol concentration of 0.04 or greater (compared to the BAC of 0.08 for non-safety sensitive positions). Under the influence of cannabis currently means testing positive for any amount of cannabis (until the legislature determines a specific level of THC in the blood that constitutes statutory impairment).

- L. 'Safety sensitive function' was defined by the United States Supreme Court as any job function fraught with such risks of injury to others that even a momentary lapse of attention can have disastrous consequences. The category of safety sensitive functions includes job duties described as safety sensitive by applicable FMCSA or other applicable regulations, statutes, or case law. Courts have also held that a County may prohibit the off-duty use of cannabis, alcohol and other drugs by an employee in a safety sensitive position because these employees can cause great human loss before any signs of impairment become noticeable to supervisors or others.
- M. 'Work related cause' means the employee has: incurred a work-related injury requiring medical attention at a medical facility; caused the injury of another person on County premises or during County time; caused damage to any County owned or leased property; or commits repeated and/or flagrant violations of safety standards.

Applicability:

- A. This policy applies to all employees and volunteers of the County as well as candidates for employment with the County who have been given conditional offers of employment. Such persons are responsible to be familiar with and comply with this policy.
- B. The provisions of this policy are subject to any federal, state, or local laws that may prohibit or restrict their applicability, and testing for substances shall be conducted and in accordance with and limited by such laws, notwithstanding any terms of this policy to the contrary.

Policy:

- A. Alcohol, Cannabis or Illegal Drugs or Substances:
The possession, sale, purchase, use, distribution, delivery or transfer of alcohol, cannabis or an illegal drug or substance while on the County's premises, while on the County's time or while driving a vehicle owned, operated, rented, leased or under the control of the County is expressly prohibited. This includes cannabis used for medical purposes in accordance with the Compassionate Use of Medical Cannabis Program Act. In addition, employees may not report to work, be on the County's premises or on the County's time under the influence of alcohol or cannabis or with any traceable illegal drug or substance in their system.

Employees who drive commercial motor vehicles, operate or repair heavy or large mobile equipment or perform other safety-sensitive functions including police officers, correctional officers, telecommunication officers, court security officers, highway employees with a CDL, and health care providers with direct patient care, in addition to the prohibitions above must not consume alcohol for four hours prior to duty time and up to eight hours following an accident or until the employee undergoes a post-accident test, whichever comes first.

P2020-1

Individuals who are registered users of medical cannabis will not be disqualified from employment based solely on the detected presence of cannabis on a drug test, unless failing to do so would put the County in violation of a federal law of cause it to lose a federal contract or funding. Individuals who are registered users of medical cannabis in accordance with the Compassionate Use of Medical Cannabis Program Act and individuals who use cannabis in accordance with the Cannabis Regulation and Tax Act may not report to work under the influence of cannabis. This policy prohibits the undertaking of any task under the influence of cannabis, when doing so would constitute negligence, professional malpractice or professional misconduct. Any violation of this policy may result in immediate discharge and may subject an employee to legal action.

B. Legal Drugs:

The County does not condone the abuse of legal drugs or working under the influence of legal drugs to the extent that job performance and/or safety is adversely affected. Employees using prescription, over-the-counter and/or other legal drugs are responsible for being aware of any potential effect such drugs may have on their judgment or ability to perform their duties.

C. Drug Panel:

DOT Regulations (49 CFR Section 40.85) provides the five drugs or classes of drugs that must be tested for in a DOT drug test. They are: (a) marijuana metabolites, (b) cocaine metabolites, (c) amphetamines, (d) opioids, and (e) phencyclidine (PCP). The County cannot exclude cannabis from a drug test performed pursuant to DOT Regulations. The DOT Regulations also prohibit a Medical Review Officer from verifying a test as negative based on information that a physician prescribed the use of marijuana or other Schedule I drug.

D. Limited Pre-Employment Substance Testing:

Upon receipt of a contingent offer of employment, candidates for safety-sensitive or security-sensitive positions may be subject to pre-employment drug testing. Individuals to whom a contingent offer is made and whose pre-employment drug test returns positive for cannabis, alcohol or illegal drugs will be ineligible for employment. Candidates who test positive may have their contingent offer of employment revoked.

E. Random Selection Testing:

The County is a drug-free workplace and reserves the right to conduct random testing on employees with safety-sensitive or security-sensitive job duties. The following positions include safety-sensitive or security-sensitive functions, and as such are subject to random testing: police officers, correctional officers, telecommunication officers, court security officers, highway employees with a CDL, and health care providers with direct patient care. Where random testing is prohibited or restricted by applicable federal, state or local statute or regulation, or other legally-binding agreement, the County will conform to all applicable laws, regulations, and/or agreements notwithstanding the provisions of this policy.

F. Reasonable Suspicion Testing:

If the County's representative has a reasonable suspicion that an employee is impaired based on the representative's observations of the employee at work, and in good faith can describe specific, articulable symptoms of that employee while working that decrease or lessen his or her performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, breath, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, negligence or carelessness in operating equipment or machinery, disregard

P2020-1

for the safety of the employee or others, or involvement in an accident that results in serious damage to equipment or property, disruption of a production or manufacturing process, or carelessness that results in any injury to the employee or others, then the County may conduct reasonable suspicion testing.

G. Post-Accident Testing:

If the County has reasonable cause to believe an employee has caused an on-the-job injury that is considered recordable under OSHA guidelines (i.e. requiring medical treatment) as a result of being under the influence, the supervisor may require the injured employee to undergo a post-accident Substance test. The employee will also be required to undergo post-accident testing if required by FMCSA, DOT or other applicable regulation.

H. Fitness for Duty:

Employees suspected of being unfit for duty as a result of the use or reasonably suspected use of Substances may be subject to Substance testing. Employees who have successfully completed a substance abuse or rehabilitation program will be required to submit to and successfully pass a fitness for duty substance test before being permitted to return to work.

I. Blood Alcohol Concentration:

A driver subject to FMCSA or DOT regulations, or any other employee who is required to perform a safety-sensitive function and who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall not perform, nor be permitted to perform, safety-sensitive functions for at least 24 hours.

J. THC Concentration:

As of this writing, the State of Illinois has no established limit of tetrahydrocannabinol (THC) in the bloodstream that constitutes impairment under the law. A person may be under the influence of marijuana as defined by a positive test for cannabis without being visibly impaired. The County should train its managers and supervisors on the specific, articulable symptoms of impairment as defined above.

K. Reasonable Zero Tolerance or Drug-Free Workplace Policy:

Under the law, the County has the right to implement a reasonable zero tolerance or drug-free workplace policy that is applied in a non-discriminatory manner. With the enactment of the Cannabis Regulation and Tax Act and the amendment to the Right to Privacy in the Workplace Act, the County is limited in its ability to prohibit or limit the use of cannabis and other Substances considered legal under Illinois law by County employees while off duty and not on-call unless those employees perform safety sensitive functions. For employees in safety sensitive positions, such as those employees who drive commercial motor vehicles, operate or repair heavy or large mobile equipment, police officers, correctional officers, firefighters, EMTs and health care providers with direct patient care, it is reasonable for the County to implement and consistently apply a zero tolerance or drug-free workplace policy that includes a prohibition on off duty use and to terminate any safety sensitive employee who violates this policy. Such a restrictive policy is reasonable because if these employees used cannabis or other Substances while off duty, they could cause great human loss while at work before any signs of impairment become noticeable to supervisors or others. For those employees who work in non-safety sensitive positions, the County can test the employee for cannabis or other Substances if first

P2020-1

the County's representative can articulate after observing the employee at work that a reasonable suspicion of impairment exists.

L. Disciplinary Action:

- a. Any employee who possesses, sells, purchases, uses, distributes, delivers or transfers alcohol, cannabis or any illegal substance on the County's premises will be removed from the work area, and may be subject to immediate disciplinary action up to and including discharge.
- b. Any employee who reports to work under the influence of alcohol, cannabis or with an illegal drug or Substance traceable in his/her system will be removed from the work area, and may be subject to immediate disciplinary action up to and including discharge.
- c. An employee who refuses to submit to testing when required under this policy will be removed from the work area, and may be subject to immediate disciplinary action up to and including discharge. Refusal to submit to testing shall include, but may not be limited to: (1) failure to appear for any test within a reasonable amount of time, after being directed to do so by the County, consistent with this policy and/or applicable regulations, including but not limited to FMCSA or DOT regulation; (2) failure to remain at the testing site until testing is complete; (3) failure to provide a sufficient breath, saliva, blood or urine specimen for any drug or alcohol test required by this policy or applicable FMCSA or DOT regulation; (4) in the case of directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of the provision of a specimen; (5) failure to provide a sufficient amount of saliva, breath, blood or urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure; (6) failing or declining to take a second test that the County or the collector has directed the employee to take; (7) failure to undergo a medical examination or evaluation, as directed by the Medical Review Officer as part of the verification process or as directed by the Designated County Representative; (8) failure to cooperate with any part of the testing process; (9) having a verified adulterated or substituted test result as reported by the Medical Review Officer.
- d. Any employee who refuses to participate in rehabilitation/treatment, as recommended as a result of a positive test and evaluation by a substance abuse professional, will not be allowed to perform work for the County and may be subject to disciplinary action up to and including discharge.

Testing Procedures:

- A. Testing: The County may require an employee or candidate to provide a urine specimen, submit to a blood test, provide saliva samples, and/or undergo breath/alcohol testing for laboratory analysis at a medical clinic or other location as designated by the County, immediately upon the request of authorized County representatives or agents in accordance with this policy.
 1. Where the County has reasonable suspicion that an employee is under the influence of a substance, he or she will be removed from the work area and provided with transportation to the place of testing. The County should call the emergency contact indicated by the employee or, if unavailable, arrange for the employee to be transported home following the test.
 2. Prior to submitting to testing, an employee or candidate may confidentially disclose to the independent medical examiner any prescription drugs or over-the-counter medications that he/she has taken or known medical condition that might interfere with an accurate test result. Such information will only be revealed to the County as permitted by law.

P2020-1

3. At the discretion of the County, employees suspected of violating this policy may be placed on administrative leave without pay pending test results. If the test results are negative; the employee will be reimbursed for any salary lost during administrative leave.
 4. Specimens reported by the testing laboratory as adulterated or substituted will be considered a refusal to test, and may be grounds for immediate termination of employment or ineligibility for hire.
 5. Should a candidate or employee fail the initial drug test, he or she will be notified of the results and will not be allowed to perform work on behalf of the County. The candidate or employee will have the option of requesting testing of the split specimen within 72 hours at the County's expense unless the candidate or employee presents documentation that serious injury, illness, lack of actual knowledge of the verified test result or inability to contact the Medical Review Officer prevented a timely request. If the candidate fails to request testing of the split specimen within 72 hours and the candidate or employee has not presented sufficient documentation to excuse the delay, County will take appropriate action including but not limited to discipline or discharge.
 6. If the test of the split specimen is also positive, the candidate or employee will have the opportunity to explain the results. The County retains the discretion to determine the appropriate disciplinary action, including discharge, following two positive drug tests.
 7. An employee who has been removed from the work area or barred from the working as a result of violating this policy, may be subject to disciplinary action up to and including immediate discharge. If an employee has not been terminated as a result of a violation, he or she may not commence or return to work unless he or she provides sufficient documentation that he or she has tested negative for the presence of a substance and is not under the influence of a substance; has been approved to commence or return to work under the terms of this policy; has received an evaluation from a Substance Abuse Professional, has successfully complied with the recommendations of the Substance Abuse Professional, and testing for the presence of a substance and the handling of test specimens was conducted in accordance with guidelines for laboratory testing procedures and chain-of-custody procedures established by applicable federal or state regulation.
 8. The County will take steps to ensure the integrity of the testing process and to ensure that all test results are attributed to the correct employee.
- B. Consent: The employee may be required to sign a consent form authorizing the medical clinic or other location as designated by the County to perform the aforementioned tests and release the results of the testing to the County.
- C. Chain of Custody Procedures: At the time specimens are taken, standard 'chain of custody' or 'chain of possession' procedures will be followed and the employee shall be given a copy of these specimen collection procedures.
- D. Confidentiality and Privacy: The employee's right to privacy will be respected, and the results of any testing shall be kept strictly confidential by the County the extent required and permitted by law. However, the County may use the results to decide upon an action to be taken towards an employee, or to the extent necessary, to defend its actions in any subsequent grievance, arbitration, or legal or other proceeding.

P2020-1

- E. Treatment: An employee who voluntarily informs the County that he/she has a drug or alcohol abuse problem and desires rehabilitation assistance may be granted a leave of absence, in accordance with the County's Family Medical Leave Act policy. The sole purpose of such leave is to obtain the necessary rehabilitation assistance. An employee with an alcohol abuse problem may also qualify for an accommodation under the Americans with Disabilities Act, if appropriate. The employee may be required to periodically provide proof that he/she is participating in an appropriate rehabilitation or after-care program. Any employee who returns to work after completion of a rehabilitation program and who subsequently violates the substance abuse policy may be immediately discharged without regard to a request for further rehabilitation.

Additional Policies:

- A. Searches: Upon reasonable suspicion, authorized representatives or agents of the County may conduct searches of and all County property, including, but not limited to an employee's desk, locker, office, or any work vehicle owned by the County, for drugs/alcohol and related paraphernalia or dangerous weapons. Items discovered through such searches may be turned over to law enforcement authorities.
- B. Employees must notify the County within 5 days of any criminal drug statute conviction.
- C. The County, with the development and implementation of this policy, is making a good faith effort to maintain a drug/alcohol-free workplace.
- D. The Designated County Representatives responsible for receipt of testing results and removal of employees from safety sensitive functions when they violate this policy are the State's Attorney or their designee at 330 N. Bench St., Galena, IL, 815-777-1090, the County Sheriff or their designee at 330 ½ N. Bench St., Galena, IL, 815-777-2141 or the County Engineer or their designee at 1 Commercial Dr., Suite 3, Hanover, IL, 815-591-2337.
- E. Employees who have questions about this policy or who would like more information regarding the effects of alcohol misuse and controlled substances on an individual's health, work and personal life, signs and symptoms of an alcohol or drug problem, and available methods of intervening when an alcohol and or controlled substance problem is suspected should contact the Jo Daviess County Public Health Administrator at 9483 US Route 20 W, Galena, IL, 815-777-0263 or CONTACT of Northern Illinois at 815-233-4357.

Acknowledgment of Receipt and Understanding of the Jo Daviess County Cannabis, Drug, and Alcohol Use/Abuse Policy

This is to certify that I have received, read, and understand the Jo Daviess County Cannabis, Drug and Alcohol Use/Abuse Policy.

Employee Name (printed)

Date

Employee Signature