LEGAL MINUTE

Navigating Legal Hemp-Derived Products in the Workplace

The legalization of hemp-derived products in Wisconsin has created a complex legal landscape for both employers and employees, particularly with respect to workplace drug testing.

Hemp-derived products containing less than 0.3% delta-9 THC are legal in Wisconsin. These products, including CBD oils, gummies, and other consumables, are widely available and marketed for their potential health benefits, such as stress relief and pain management. However, their use can sometimes result in a positive drug test.

Many workplaces enforce strict drug policies that prohibit THC use, even if the substance originates from legal hemp products. However, Wisconsin's Fair Employment Act (WFEA) protects employees from discrimination based on their use of lawful products off of the employer's premises and outside of work hours. Employers must ensure their drug policies do not unfairly discriminate against employees who lawfully consume hemp-derived products. However, employees should be able to demonstrate that a positive THC test resulted from legal hemp product use rather than illegal marijuana consumption, and should keep receipts and packaging as proof that consumed products were legal.

Employers should review and update their drug policies to clearly define their workplace drug testing policies, ensuring they comply with the WFEA and account for the legality of hemp-derived THC. Additionally, standard drug tests cannot differentiate between THC from illegal marijuana and legal hemp products, so employers may need to explore more advanced testing methods if they wish to enforce strict drug-free policies.

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