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# Post Employment Woes: Tips on Asking the “Right” Questions During Pre-Employment

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# PRESENTERS



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# Webinar Housekeeping



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Q & A at the end of the presentation



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# Agenda

## Overview

### **Permissible Questions During An Interview**

- Pop-Up Questions and Panel Discussion

### **Avoid Hiring Pre-Existing Conditions**

- Pop-Up Questions and Panel Discussion

### **Medical & Recreational Marijuana**

- Pop-Up Questions and Panel Discussion

### **Pre-Employment Examination**

- Pop-Up Questions and Panel Discussion

### **Prior Criminal History**

- Pop-Up Questions and Panel Discussion

### **Prior Wage Information**

- Pop-Up Questions and Panel Discussion

### **Q&A**

NOTE: The materials and situations contained within this presentation are general to encompass several areas of law throughout different jurisdictions. Employers should consult with appropriate specialists in their own states prior to promulgating specific policies and procedures.



# Overview

This is an interactive webinar and audience participation is encouraged. The panelists will discuss tips and ways for employers to minimize workers' compensation costs by asking the most appropriate questions during the pre-employment screening process. The panelists will also discuss how to avoid common post-employment challenges while compliant with applicable Federal and State laws, Americans with Disability Act (ADA), and Equal Employment Opportunity Commission (EEOC).

# PERMISSIBLE QUESTIONS DURING AN INTERVIEW

# Answer:

**D. Can you perform job duties with or without accommodations?**

## Discussion:

- Why would the other questions not be permissible?
- Interview v. Job Application
- Can any of those questions be asked on the application?
- Any questions or personal examples?

# AVOID HIRING PRE-EXISTING CONDITIONS



# Answer:

**C. Request a medical examination from Joe**  
*AFTER a conditional offer has been made to Joe.*

## Discussion:

- Why would the other actions not be permissible?

# MEDICAL & RECREATIONAL MARIJUANA USE





# Answer:

## B. Depends on the state/whether laws prohibit adverse action

### Where is Cannabis legal?

- Oregon, Washington, California, Nevada, Arizona, Montana, Utah, New Mexico, North Dakota, South Dakota, Colorado, Oklahoma, Texas, Minnesota, Missouri, Arkansas, Louisiana, Michigan, Illinois, Iowa, Mississippi, Alabama, Georgia, Florida, Ohio, Virginia, Pennsylvania, Maine, New Hampshire, Vermont, New York, Massachusetts, Rhode Island, New Jersey, Delaware, Maryland, Alaska, Hawaii.

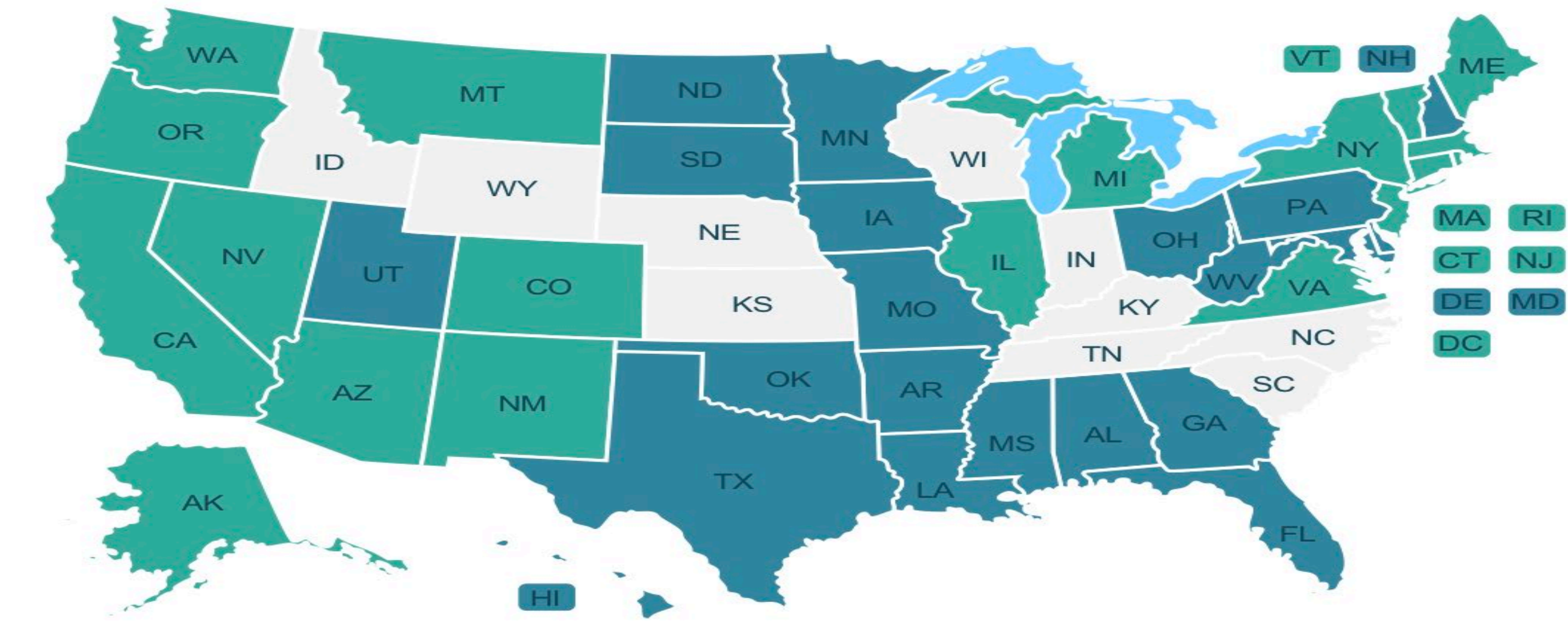
### Where is Cannabis NOT legal?

- Idaho, Wyoming, Nebraska, Kansas, Wisconsin, Indiana, Kentucky, Tennessee, North Carolina, South Carolina.



# Current Legalization of Cannabis in US

## Where cannabis is legal in the United States



- Medical & recreational
- Medical only
- Illegal

Courtesy: <https://cannigma.com/us-states-where-cannabis-is-legal/>



# PRE-EMPLOYMENT EXAMINATION CLE POP-UP QUESTION



## CLE Pop-Up Question:

**What is permissible if an employer wants an employee to undergo physical examinations to ensure they can perform job functions?**

- A. Employer can ask for a pre-employment physical to occur
- B. Results can be stored with employee's personnel materials
- C. Physicals can be tailored to each individual employee
- D. Physicals can test stamina, flexibility and strength

### Discussion:

- Why would the other options not be appropriate?
- Could an employer be liable for an injury during a pre-employment physical?
- Could this pre-employment physical be utilized for comparison should a “subsequent” injury occur?



# PRIOR CRIMINAL HISTORY

# Answer:

## C. Depends on the laws of the state and/or city in question

### Discussion:

- Rationale: Many states and cities have enacted “Ban the Box” laws which prohibit asking a candidate about their criminal history, at least during the initial part of the hiring process. The purpose of these laws is to provide equal consideration for all candidates during the initial portion of the process. Many states allow the employer to perform a background check after a conditional offer has been made. As of 2022, 36 states and over 150 cities and counties have implemented ban-the-box statutes.

# WAGE HISTORY



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# Answer:

## **D. Depends on the laws of the state and/or city in question**

### **Discussion:**

- Rationale: These laws are intended to limit or end cycles of pay discrimination by using pay history to determine the candidate's pay. Some jurisdictions will allow pay history during the application or interview if volunteered by the applicant. Other jurisdictions do not allow salary history to determine pay even if the information is known by the employer or volunteered by the candidate. Some jurisdictions will allow discussion of "pay expectations" and others allow an employer to inquire about salary history after an initial offer has been made.

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**THANK YOU! If you have any questions, please contact one of the presenters**



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