A TOKIN’
HYPOTHETICAL
HIGHLIGHTS

By: Christine Godsil Cooper
Lori D. Ecker
N. Elizabeth Reynolds
Joseph H. Yastrow
• Mary Jane Potts (“Potts”) is a long-term employee.

• Potts is a union member.

• The collective bargaining agreement between Potts and her employer, Canibusiness, provides for discharge for just cause and incorporates Canibusiness’ reasonable suspicion drug testing policy by reference.
• Potts has severe arthritis and has a medical marijuana prescription which requires her to smoke three (3) joints per day: morning, noon and afternoon. She is a “qualifying” patient.
• Potts requests waiver/accommodation from the drug policy to allow her to smoke in the parking lot during lunch.

• Request is denied.
• Charge filed with state discrimination agency for refusal to accommodate.

• Potts subsequently is asked to submit to a reasonable suspicion test.
  – Potts refuses the test and is terminated.
  – Potts takes the test and fails because she has cannabis in her system.
HIGHLIGHTS OF CANIBUSINESS’ DRUG AND ALCOHOL POLICY
• Provides for testing of applicants and “reasonable suspicion” and “post-accident” testing for employees.
• Marijuana is a “drug” under the policy.
• Policy prohibits, inter alia, use, possession or being under the influence. “Under the influence” is not defined in the policy.
• Provides for discharge upon the first offense, including offenses involving refusal of a request to take a test.

• Applicants who test positive for marijuana are rejected automatically as candidates for employment.