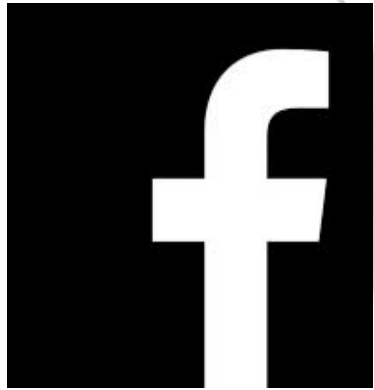


2019 Employment Law Symposium



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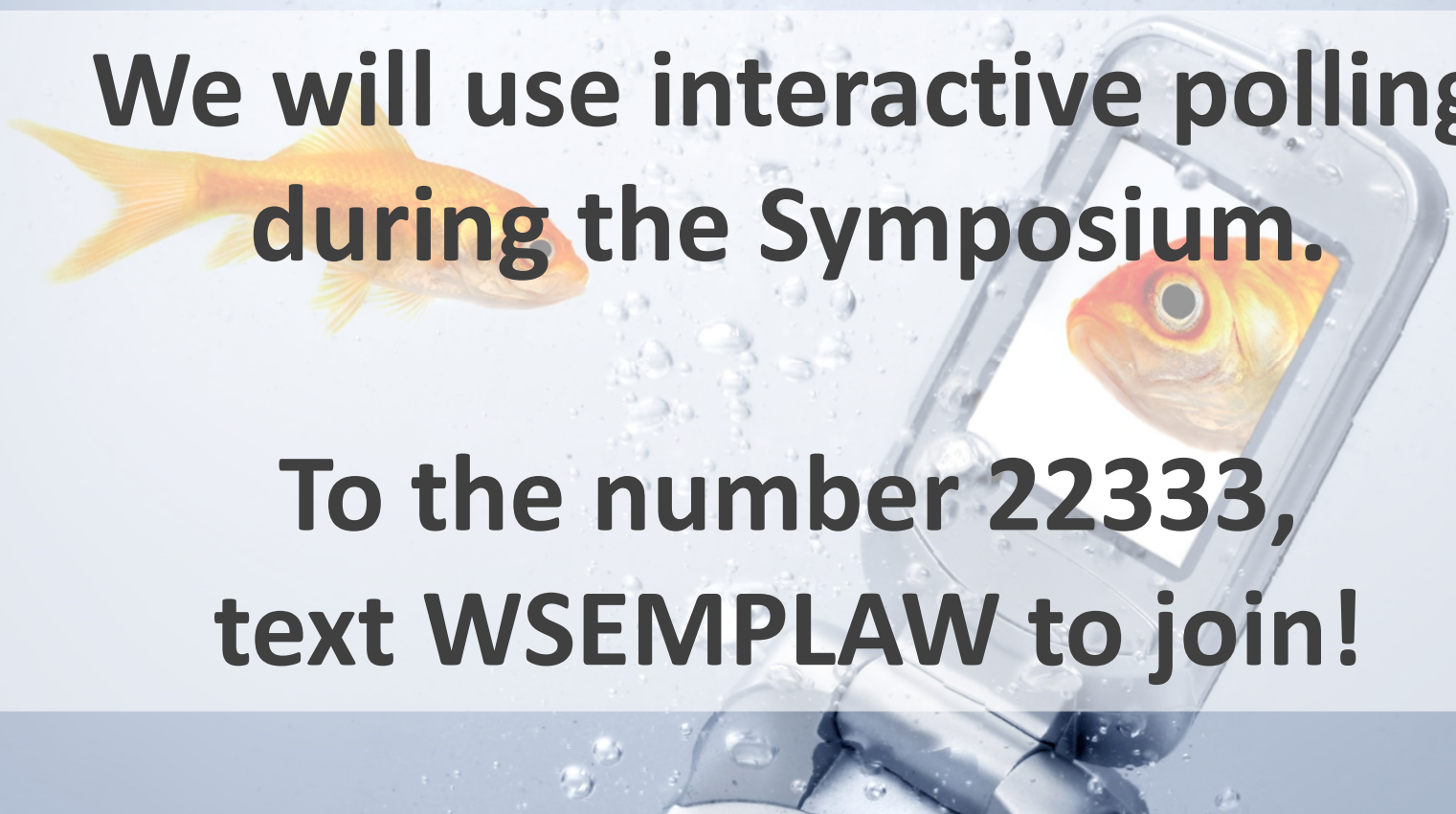
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**We will use interactive polling
during the Symposium.**

**To the number 22333,
text WSEMPLAW to join!**

**Today's Symposium is pre-approved
for HRCI, SHRM, and CLE credits.**

**More accreditation information is available at the
registration table and in your attendee packets.**



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Welcome and Opening Remarks

Devon Williams
Ward and Smith




Ken Gray
Ward and Smith



Hayley Wells
Ward and Smith
@WNCBreweryLaw





LARPing: A Day in the Life of HR

Background

- You have just been hired to be the first human resources professional for Red Flag Security, LLC, which is a fast growing cybersecurity firm. During the hiring process, you learned the following information:
 - Red Flag Security started its business in 2018 and has grown rapidly with virtually no attention to HR issues. Red Flag Security does not have an employee handbook or any personnel policies.
 - It currently has 25 employees and 30 independent contractors doing work for it.
 - All employees are paid on a salary basis so as to avoid "punching a time clock" and keeping up with their hours worked.
 - All independent contractors are paid on a straight time hourly basis for all hours worked.
 - The President of Red Flag Security, Buster Williams, told you during the hiring process that he wants you to keep him out of trouble in terms of HR issues so he can focus on growing the company.
 - You are going to be paid a good salary but will have a shoestring budget for your one-person HR Department.





Take 5 minutes to gather into a group and discuss:

- 1. Any issues you see, and**
- 2. Your strategies for addressing these issues.**

Also, if you have not connected to the polling software via text yet, please do so during this time as you will be responding via text throughout this session.

To the number 22333, text WSEMP LAW to join.

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What issues did you see?

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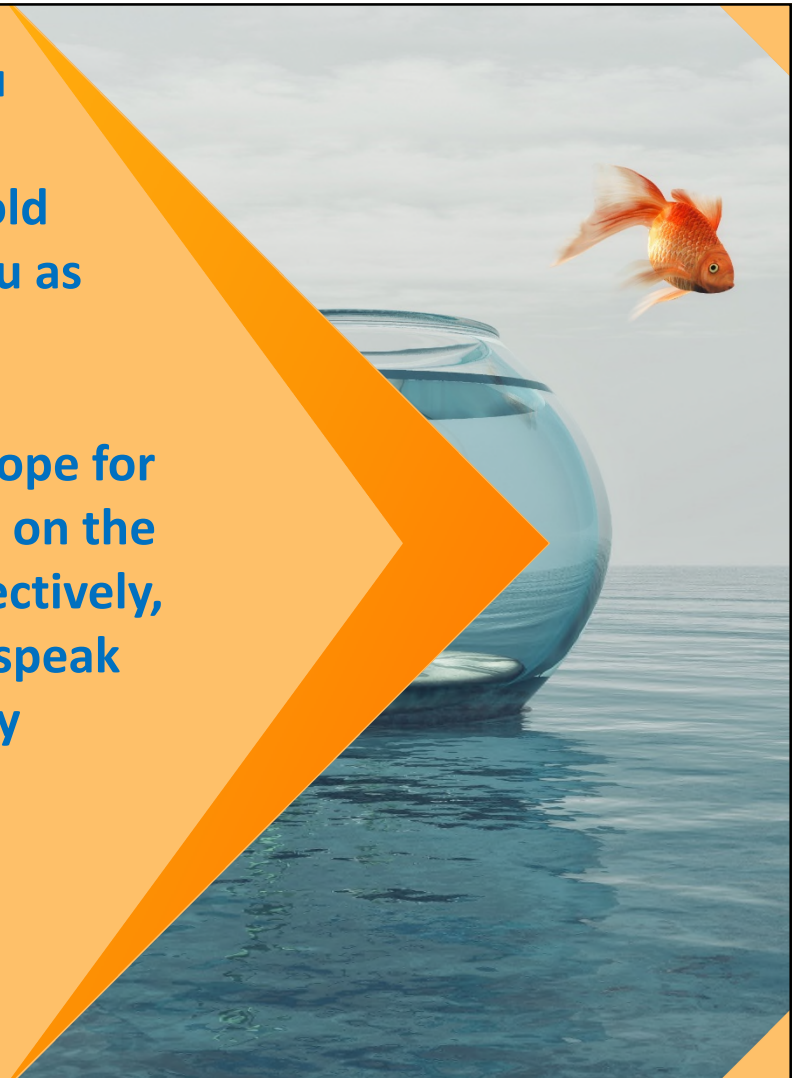
What is your strategy for addressing these issues?

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You are scheduled to start work on Monday. You receive a text from President Buster Williams on Sunday afternoon. Buster Williams is a 35 year old married father of 2 children. He wants to see you as soon as you arrive at work on Monday morning.

One person in your group should open the envelope for Buster Williams, read it, and be prepared to take on the role of Buster. Then, the rest of your group, collectively, will function as the HR professional. Buster will speak first, and then the HR professional should ask any questions that you think is appropriate.

You will have 5 minutes.



Take 5 minutes to talk to Buster Williams.

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What problems did you see in the meeting with Buster Williams?

What is your next step?

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One person in your group should open the envelope for Sally Sayre, read it, and be prepared to take on the role of Sally. Then, the rest of your group, collectively, will function as the HR professional. The HR professional should ask Sally any questions pertinent to the investigation. Sally should respond to these questions using the information provided in the envelope.

You will have 5 minutes.



Sally Sayre

- Sally is a 30-year-old homosexual, and she, along with her spouse, Susie, have adopted a 2 year old child from Mexico.
- Buster Williams knows Sally's sexual orientation but does not know she has a child from Mexico.
- Sally has worked as a receptionist at Red Flag Securities since it started operations.

Take 5 minutes to interview Sally Sayre.

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What issues arose in Sally Sayre's interview?

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What is the next step?

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One person in your group should open the envelope for Steve Strongman, read it, and be prepared to take on the role of Steve. Then, the rest of your group, collectively, will function as the HR professional. The HR professional should ask Steve any questions pertinent to the investigation. Steve should respond to these questions using the information provided in the envelope.

You will have 5 minutes.



Steve Strongman

- Steve is a 30 years old and single. He is a Senior Data Analyst and has been with the company since it started.
- Steve thinks highly of Buster Williams and thinks he is a good guy. Steve and Buster are golfing buddies.
- Steve has known Sally Sayre since high school and does not have a good opinion of her. In high school, she cheated in every class the two of them had together. Steve thinks she is lazy, and cannot understand why Red Flag Security hired her in the first place. Steve has witnessed Sally be flirtatious with both men and women.

**Take 5 minutes to interview
Steve Strongman.**

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What issues arose in Steve Strongman's interview?

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What is the next step?

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Wrap Up

Melissa Forshey Schwind
Ward and Smith
@MForsheySchwind



Thomas M. Colclough

District Director,
Charlotte District Office
U.S. Employment Opportunity
Commission

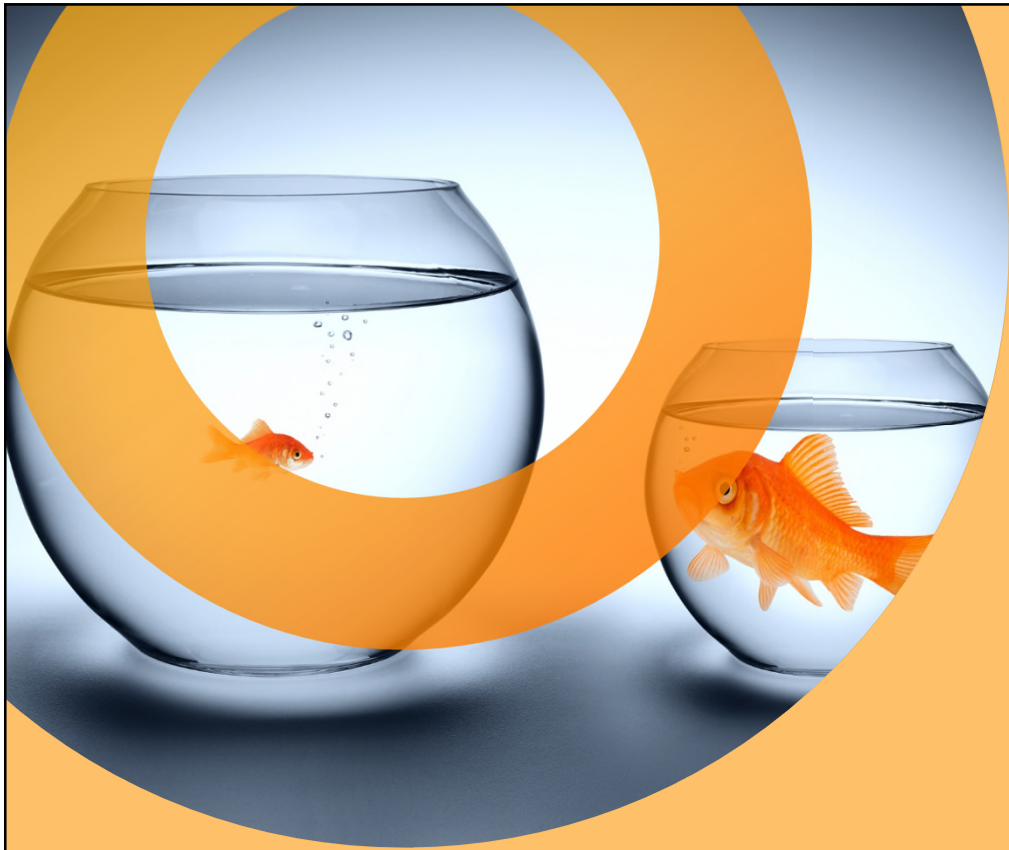
Jerry Sayre

Employment Law Counselor and
Litigator, Advising Employers
Ward and Smith





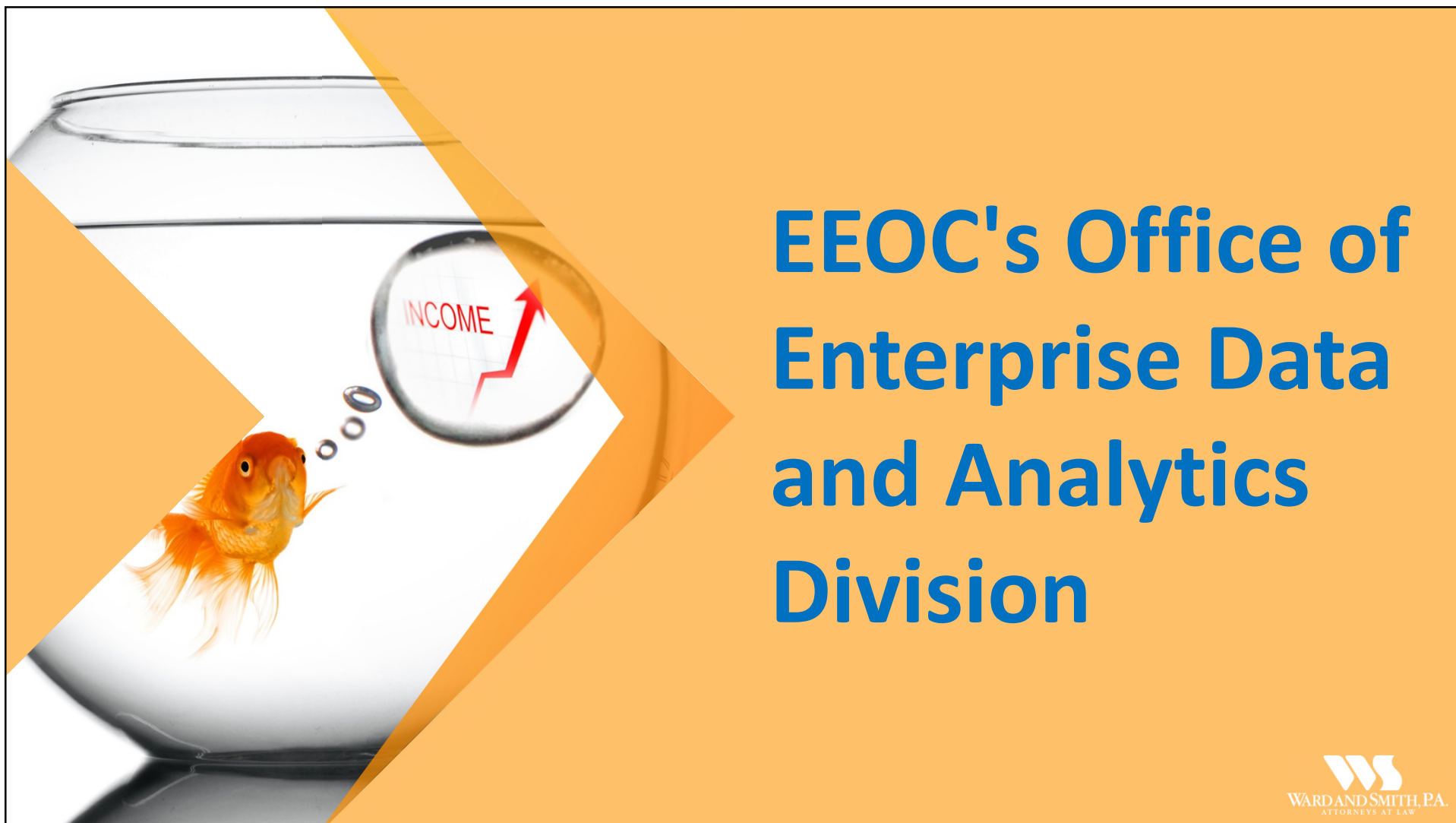
Understanding the EEOC: A Conversation with Tom Colclough



Sexual Harassment

Pay Discrimination





EEOC's Office of Enterprise Data and Analytics Division

April Mills
Ward and Smith





**Let's take a
break!**

Ken Wooten
Ward and Smith



Josh Stein

Attorney General
North Carolina

Devon Williams

Labor and Employment Counselor
and Litigator
Ward and Smith



Q&A with the North Carolina Attorney General



What do you think are the top issues that AG Stein and the NCDOJ are focusing on to provide law enforcement, legal, and consumer help across North Carolina?

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Attorney General
Josh Stein

Marla Bowman
Ward and Smith





**Jerry
Sayre**



**Emily
Massey**



**Grant
Osborne**

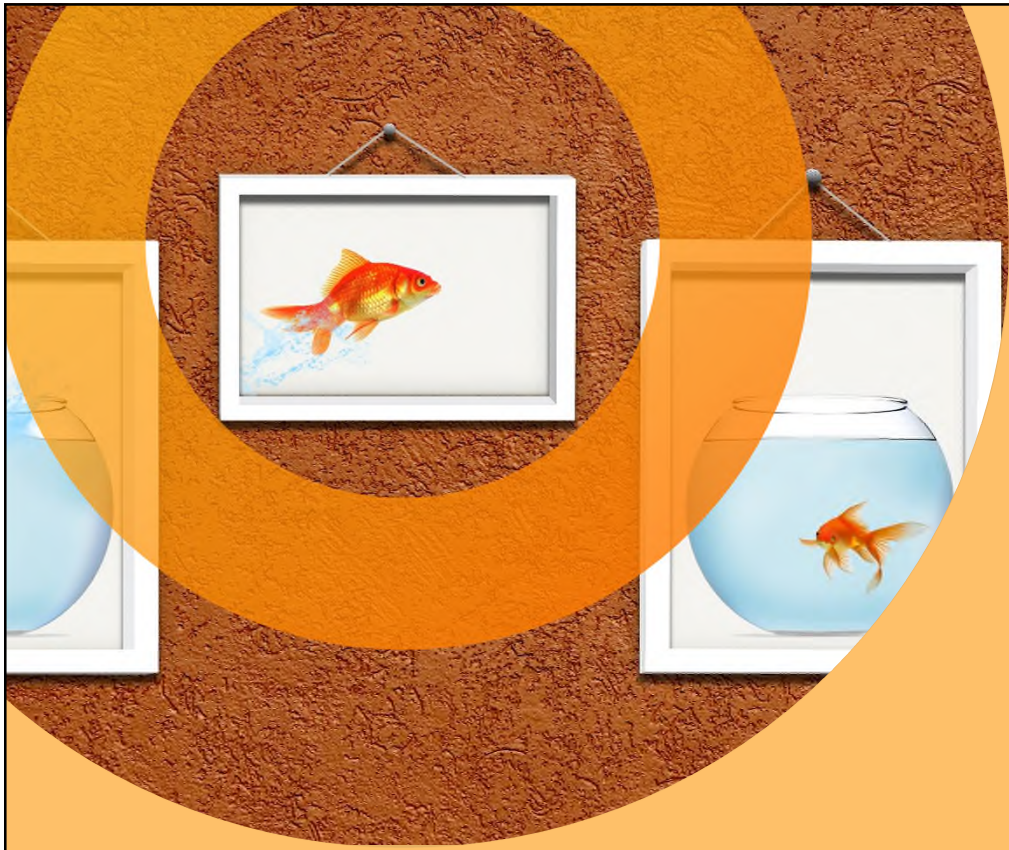


**Allen
Trask**



**Devon
Williams**

Rapid Fire Legal Update



Restrictive Covenants

Jerry Sayre

Pregnancy Discrimination

Emily Massey







Company-Owned Electronic Pitfalls

Grant Osborne



Examples of company-owned information technology ("IT")

- Computers: desktop and laptop
- "Personal digital assistant": Remember those? (*E.g.*, BlackBerry, Palm Pilot)
- "Smart" phones
- Company-provided vehicles with company-installed GPSs
- USB flash drive, a/k/a "thumb drive", "jump drive", and "memory stick".

Recommended IT Policies

- Why have policies?
 - "An unvoiced expectation is a preordained resentment." And conflict.
 - Therefore: Establish and publish **clear written policies** regarding use of company-owned IT, to establish company's rights and expectations and avoid conflicts.
 - Get **written acknowledgements** that policies understood.



IT Policies Examples

- Who owns IT?
- Who has the right to use IT?
- Purposes for which IT may be used; and may NOT be used.
- Security of IT.
- Downloading and installation of software.
- Expectations of privacy in use of IT.
- Disposition of IT at the end of employment.





Risks of Monitoring IT

- Are there risks in monitoring use of IT? A: **YES.**
 - Content of employee's emails
 - Employee's usage of Internet (websites visited and/or content posted by employees on blogs/social networking sites)
 - Amount of time that employees spend surfing the 'net while at work
 - Where employees are (via video-surveillance or IT-based or vehicle-based GPSs)

Monitoring Implicates a Possible Violation of:

- Electronic Communications Privacy Act of 1986
- Stored Communications Act (part of ECPA)
- *Governmental employers*: Fourth Amendment to U.S. Constitution, which protects people's right "to be secure in their ... papers, and effects, against unreasonable searches and seizures".
- State "wiretapping" laws
- Data Privacy and Security laws
- Employment discrimination laws (if monitoring has *disparate impact* on employees based on race, color, religion, sex, etc.)





National Labor Relations Act ("NLRA")

- Enforced by National Labor Relations Board
- Coverage
- Employees' rights under Section 7 of NLRA
- Does this apply only if a labor union is involved?



How to Break the Law

SPY on your employees for purpose of monitoring whether they are engaging in "protected concerted activity" or in way that creates **reasonable impression** that that's your goal.

Solution: Reasonable Precautions

- Tell employees in writing that they're subject to monitoring if they use company-issued IT that's installed with GPS.
- Tell employees in writing that they have *no expectation of privacy* regarding their locations when using company-IT installed with GPS. (But how to disable during off-hours?)
- Obtain **written consent** of employees to be monitored by GPS on company-IT.

The End of Hemp Prohibition and the Effects on Employee Drug Testing

Allen N. Trask, III





The Differences Between Marijuana and Hemp

- "Hemp" and "Marijuana" are legal definitions.
- They are two different sides of the same coin; they are both versions of the Cannabis plant, but they have very different chemical makeups.
 - Cannabis contains a variety of different compounds called Cannabinoids, the most famous of which are Tetrahydrocannabinol (THC) and Cannabidiol (CBD).
 - Both Cannabinoids affect the human body; however, THC induces psychoactive effects (gets the user "high"), while CBD is a non-psychoactive, anti-inflammatory agent.
 - Hemp contains an exceedingly low concentration of THC (less than 1%) and a high concentration of CBD; Marijuana is abundant in THC, with concentrations between 15% to 40%.

Why the Difference Matters

- For years, this legal distinction did not matter. Hemp was considered a Schedule I banned substance under the Controlled Substances Act of 1972 ("CSA").
- The federal Agricultural Act of 2014 authorized research institutions and state agricultural agencies to grow industrial hemp as part of a research pilot program.
- North Carolina then established its own state-level pilot program and the NC Industrial Hemp Commission in 2015.
- This effort to effectively decriminalize hemp culminated in the passage of the federal Agricultural Act of 2018 (a.k.a "2018 Farm Bill").



Hemp vs Marijuana: Commercial Uses

- Because Marijuana is abundant in THC, it is naturally grown for its psychoactive properties, whether it be for recreational or medicinal use.
- Hemp, on the other hand, is grown for myriad commercial uses, including paper, clothing, building materials, biofuel, food products, oils and CBD products.



Slide 61

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Can we pur

Allen N. Trask III, 5/1/2019



The 2018 Farm Bill

- Expansion of the legal definition of "hemp" to include all parts of the Cannabis sativa L. plant
- Amendment of the definition of "marijuana" under the CSA to expressly exclude "hemp" (as defined above) and to expressly carve-out of the Schedule I controlled substances list any tetrahydrocannabinols (THC) that exist in "hemp."

The Result → Hemp and hemp-derived cannabinoids, extracts, and isomers have effectively been legalized on the Federal level, although the regulatory world remains in flux.

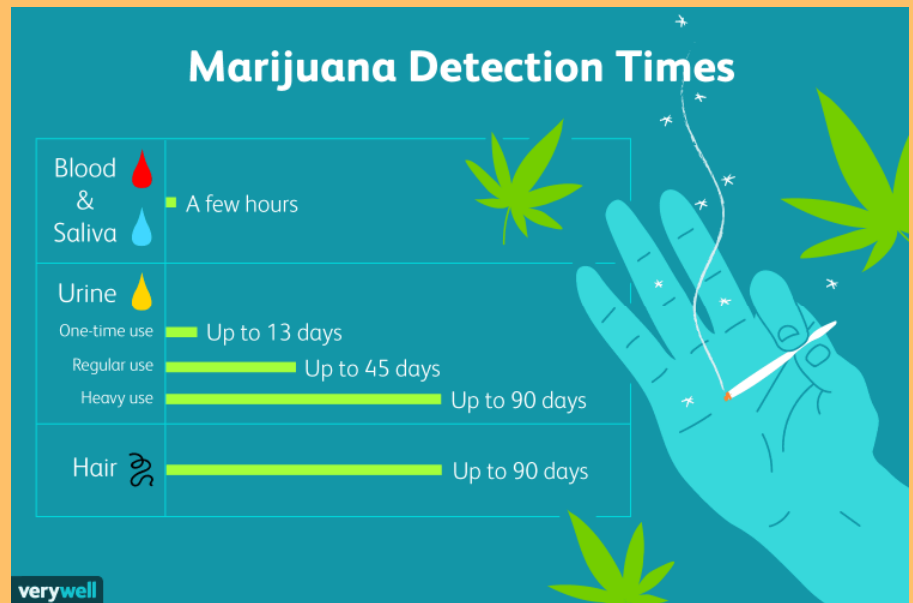


The 2018 Farm Bill

- States may, individually, determine whether or not they want to retain primary regulatory authority over the production of hemp within their borders.
- "Hemp" and related products can be transported legally across state lines and states must not interfere with that transport, allowing for interstate commerce.

CBD Effects on Drug Testing

- "Full spectrum" CBD contains trace amounts of THC.
- THC is metabolized slowly in the body.
- A regular user of legal CBD may, over time, reach a level of THC that would render a positive result in a drug test.
- Why does that matter for North Carolina employers?



NC Lawful Use of Lawful Products Act

- Under NCGS 95-28.2, North Carolina restricts an employer's ability to punish its employees for using lawful products on their own time.
 - "It is an unlawful employment practice for an employer to fail or refuse to hire a prospective employee, or discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment **because the prospective employee or the employee engages in or has engaged in the lawful use of lawful products if the activity occurs off the premises of the employer during nonworking hours** and does not adversely affect the employee's job performance or the person's ability to properly fulfill the responsibilities of the position in question or the safety of other employees."

In Conclusion:
Call our labor and
employment team if you
currently drug test
employees or are
thinking about drug
testing them.





Wrap Up

Devon Williams

Questions and Answers



Closing Remarks

Ken Gray
Ward and Smith



Thank you for joining us!



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