



Employee Drug Testing and Business/Sales Tax Issues for the Veterinary Practice

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Drug Testing in the Veterinary Practice

- ▶ **Employment at Will is the General Rule**
 - Employees can be fired or leave employment at any time for any reason
 - Major Exception: Termination based on discrimination or retaliation
 - Absent a written contract or implied contract – employment is presumed to be at-will



Drug Testing in the Veterinary Practice

▶ **The Personnel Handbook**

- Explains the basic policies followed in the practice
- Should contain the following disclaimers:
 - The Handbook is not a contract
 - It only serves as a guide
 - It is not binding on employer
 - It does not modify the at-will employment relationship
 - It may be amended, modified or waived at any time for any reason at the discretion of employer without notice to or consent from employee



▶ **Drug Testing in Public Employment**

- Public employees have limited right to privacy which means drug testing is more limited than in private employment
- Usually limited to employees in “safety sensitive positions”
- Specific procedures must be followed



▶ **Drug Testing in Private Employment**

- There is no constitutional right to privacy in private employment
- Private employers may establish drug testing policy for random drug testing or reasonable suspicion drug testing
- All employees may be subject to random drug testing



▶ **Drug Testing in Private Employment**

- Random drug screening is permitted.
Reasonable suspicion drug testing takes place after an event or incident in the workplace
- Protocol to be followed includes clean capture of specimen, referral to certified clinical laboratory and review of test results by a qualified medical professional



▶ **Tennessee Drug Free Workplace Act**

- Tennessee has a process through which an employer can be certified as a Drug Free Workplace
- Certification is handled through the Tennessee Department of Labor and Workforce Development



▶ **Tennessee Drug Free Workplace Act**

- To qualify, an employer establishes a program that must include:
 - Written notice to employees
 - Education about drug abuse
 - Procedural requirements governing specimen collection, chain of custody, specimen testing and specimen evaluation



Drug Testing in the Veterinary Practice

▶ **Tennessee Drug Free Workplace Act**

- If qualified, an employer receives certain benefits:
 - Discounted rates for workers comp insurance
 - A presumption that drug/alcohol use was the cause of a workplace injury which is only rebuttable by clear and convincing evidence
 - A presumption that drug/alcohol use is the cause of a workplace injury if an employee refuses testing which is only rebuttable by clear and convincing evidence



▶ **Drug Testing in Employment – Applicable Laws**

- Tennessee Human Rights Act
 - Applies to all employers of 8 or more employees
 - Prohibits discrimination in employment based on a physical or mental disability but does not require that a reasonable accommodation be provided to a qualified person with a disability



▶ **Drug Testing in Employment – Applicable Laws**

- **Americans with Disabilities Act**
 - Applies to all employers of 15 or more employees
 - Prohibits discrimination in employment based on a physical or mental disability and may require the employer to provide a reasonable accommodation to a qualified person with a disability



▶ **Pre-Employment Drug Testing**

- Can only occur after an offer of employment is made
- Offer of employment is contingent on the job candidate satisfactorily completing the drug screening



Drug Testing in the Veterinary Practice

▶ **Drug/Alcohol Use as a Disability**

- Drug or alcohol addiction is handled as any other illness
- Potential employees may not be asked about medical history unless there is a job specific requirement
- Employment may not be terminated solely because of drug or alcohol addiction



- ▶ **Drug/Alcohol Treatment and the Family and Medical Leave Act**
 - Employers of 50 or more employees are subject to the Family and Medical Leave Act
 - Leave for medical treatment is covered if an employer has 50 or more employees



▶ Questions?



Tennessee Business/Sales Tax and the Veterinary Practice

▶ **Tennessee Business Tax**

- Generally imposed on gross receipts derived from engaging in certain vocations, occupations, business or business activity (T.C.A. §67-4-708)



▶ **Tennessee Business Tax**

- Veterinary medical services are not subject to business tax
- Non-medical service items such as the sale of pet food, medications to be administered at home, and non-medical grooming services are subject to business tax
- Notice 14-13, (10/2014), 2016 Tennessee Business Tax Guide, p.23



▶ **Tennessee Business Tax**

- Business tax license must be secured from your local city or county clerk
- Annual business tax return required, see 2016 Tennessee Business Tax Guide, pp.6-7,18-19



▶ **Tennessee Business Tax**

- Consult with your accountant to assure your practice is properly filing an annual business tax return
- Check the Tennessee Department of Revenue website for the annual Business Tax Guide
<http://www.tn.gov/assets/entities/revenue/attachments/bustaxguide.pdf>



Tennessee Business/Sales Tax and the Veterinary Practice

▶ **Tennessee Sales Tax**

- Generally imposed on the sale, lease or use of tangible personal property and certain services (T.C.A. §67-6-201)



▶ **Tennessee Sales Tax**

- Sales taxes must be collected by the dealer that provides the taxable service or product, see 2016 Tennessee Sales Tax Guide, pp.13-14



▶ **Tennessee Sales Tax**

- Tax registration is completed through the Tennessee Department of Revenue website at TNTAP
- Tax returns and payments made monthly through the Tennessee Department of Revenue website
- TNTAP - https://tntap.tn.gov/eservices/_/
- Consult with your accountant
- Sales and Use Tax Guide is available through the Tennessee Department of Revenue website



▶ **Tennessee Sales Tax**

- Applicable to:
 - Bathing for non-medical reasons
 - Pet foods
 - Pet Supplies and Services

See, Sales and Use Tax Notice, 08-01 (1/2008)



Tennessee Business/Sales Tax and the Veterinary Practice

▶ **Tennessee Sales Tax**

- External fixators used by veterinarians are subject to sales and use tax since the exemption is applicable only to human use

See, Letter Ruling, 08-13, (2/22/2008)



▶ **Tennessee Sales Tax**

- Veterinarians are subject to sales or use tax on purchase price of legend drugs used in practice except for drugs used in treatment of livestock and instruments used in the administration of said drugs
- Exemption can be secured through a completed Streamlined Sales Tax Certificate of Exemption See, Tennessee Sales and Use Tax Guide, p.50, Streamlined Certificate of Exemption Application and Instructions)



- ▶ **Underlying Premise for Business and Sales Tax**
 - Veterinary medical services are exempt
 - Animals are considered property; therefore, services and supplies provided to animals are generally taxable except for livestock



▶ Questions?

