



# Human Resources Committee

Phoenix Arizona

April 2013

Let's play....

*Is it Legal?*



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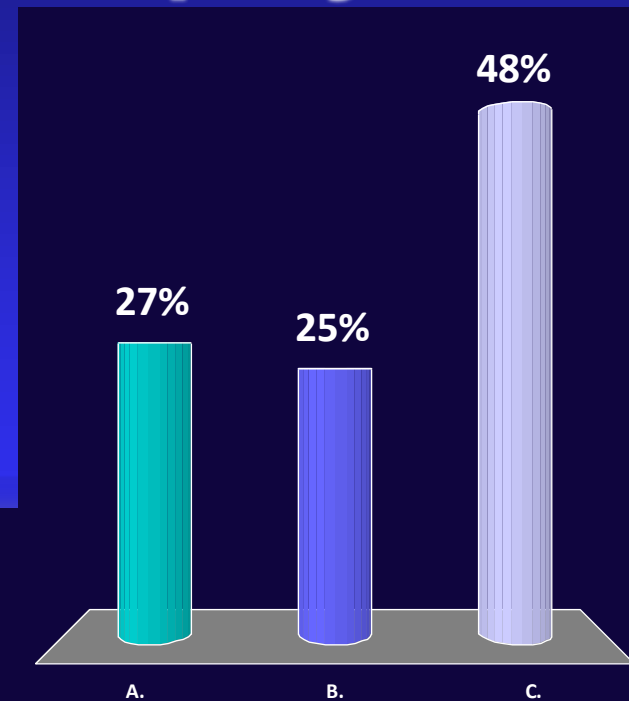
**1** Employee is in an accident at work, goes to clinic for his injuries, gets drug tested at the clinic, and tests “positive” for marijuana.

**Can you terminate the employee?**

A. Yes

B. No

c. It Depends



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It depends.

Do you have an Alcohol & Drug  
Policy?

What does it say about who gets  
tested?

Is it enforceable?



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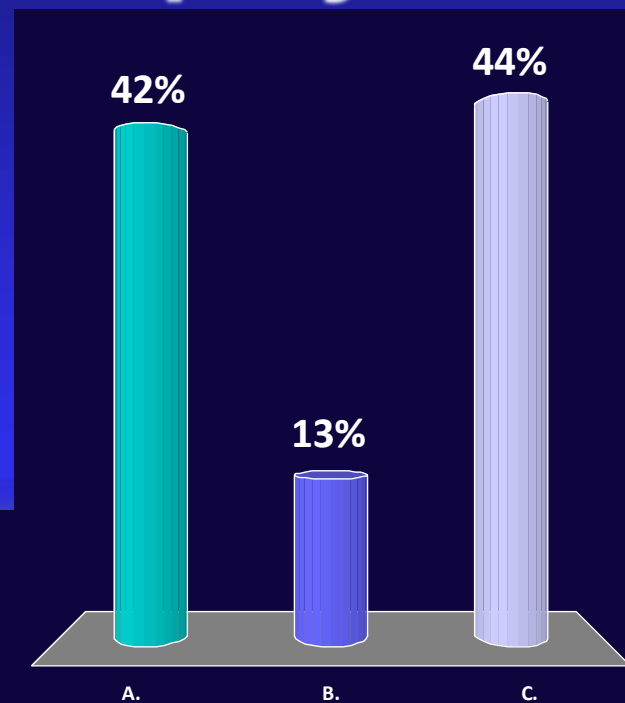
**2** Same facts... This time you have an enforceable policy signed by the employee, BUT *“I have a medical marijuana card.”*

**Can you terminate the employee?**

A. Yes

B. No

c. It Depends



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# Yes

The MM may keep them out of jail...

but it *does not* trump the employer's enforceable Alcohol & Drug Policy.



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**3** During an interview...  
OK. Everything looks good to me. The job is yours. Can you start in the morning?

**Legal?**

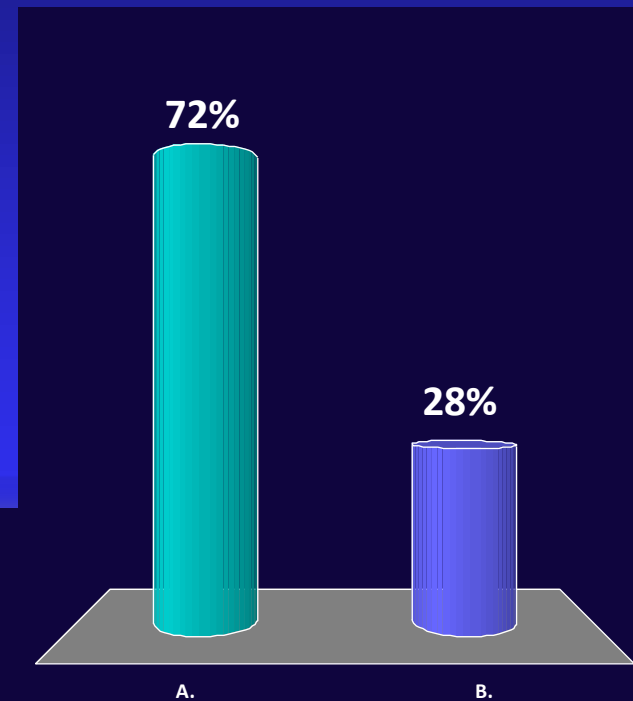


A. Yes

B. No



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Yes.

This is *legal*...

but not very smart!

What about:

Post-offer drug screen?

Reference checks?

Background check?



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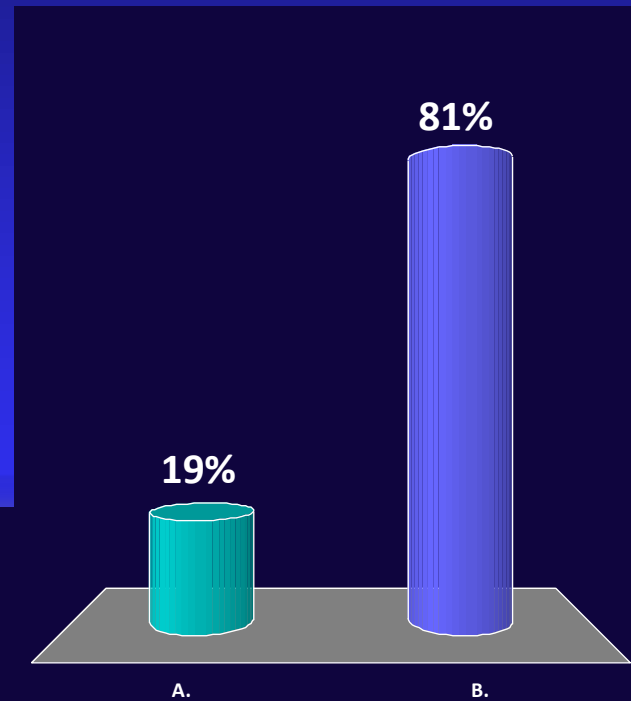
**4** I remember what you said about the commission/flat-rate exemption...  
My techs all make a *lot* of \$\$ on flat rate so they don't get paid OT, and since I don't have to worry about OT, I don't have them punch the clock.

## Legal?



A. Yes

B. No



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**No.**

**This is NOT legal.**

**Remember, commission/flat-rate exemption has two main requirements:**

**(1) More than 50% commissions**

**AND**

**(2) Make 1.5 X min. wage for all hours worked**

**(If you can't prove how many hours worked, you can't prove this requirement!)**



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**5** My techs are paid flat rate, qualify for the commission/flat-rate exemption, and I have them punch the clock.

Do I have to worry about minimum wage issues?

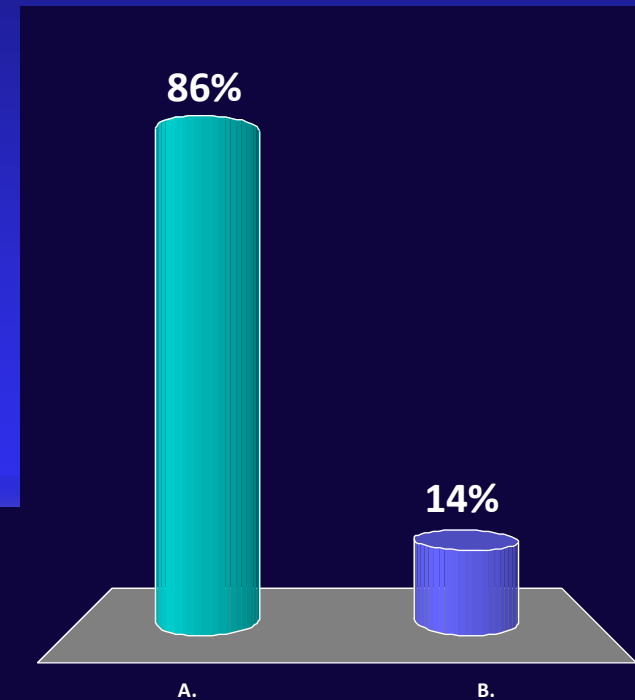


A. Yes

B. No



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It depends on your jurisdiction!

In “federal/FLSA”  
jurisdictions, you can average  
the \$\$ over the clock hours to  
determine if min. wage is  
satisfied.



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# It depends on your jurisdiction!

Beware in California (of course), two courts recently held that employer *cannot* average the \$\$ over the clock hours for min. wage purposes. Flat-rate or commission is only designed to pay for time repairing/selling, so must pay separate wages (at least min. wage) for non-productive time.

*Appeal imminent – stay tuned!*



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**6** Bob is a tech and Mary works in the office. They started dating a few months ago, and just broke up because Mary found someone else. Mary just left me a note saying Bob keeps asking her out on dates and she wants him to stop. I told her that's what she should expect when she dates someone at work, and she needs to work it out with Bob to keep personal issues out of the workplace.



# 6 Did I do the right thing?

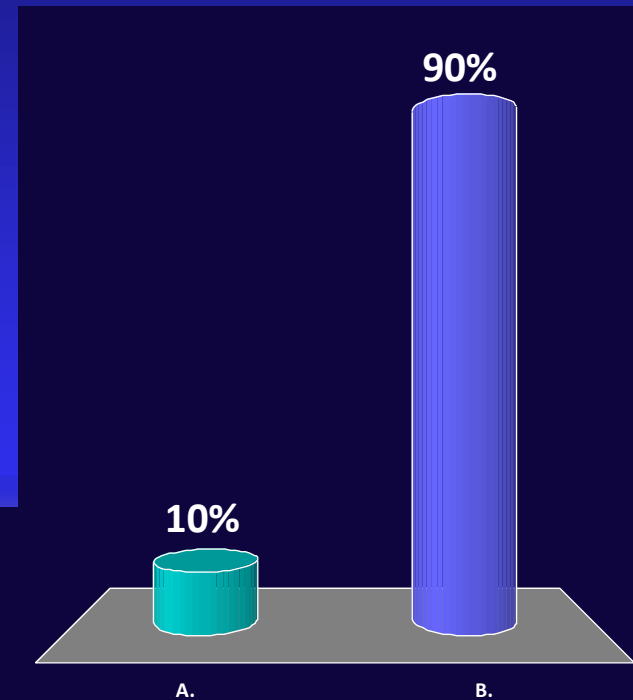


A. Yes

B. No



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No.

Employer has a duty to prevent and promptly correct any sexually harassing behavior.

Welcome vs. Unwelcome?

Do you have a “non-fraternization” policy?



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**7** I have all my employees sign mandatory arbitration agreements.

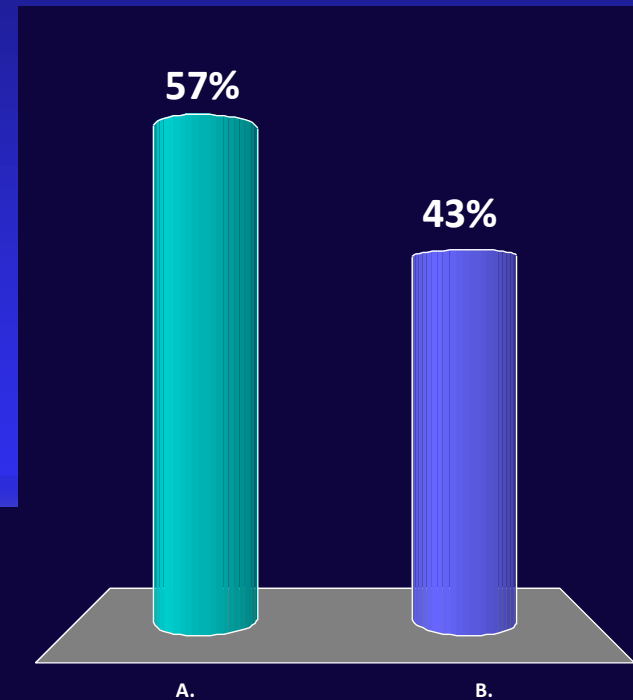
**Legal?**

A. Yes

B. No



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Yes, but....

Some states require additional *consideration* to bind the EE to arbitration.

Arbitration is an important tool employers can use to manage risk and liability.



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**8** I'm tired of all the hassle of having employees...I am going to terminate them all and have them work for me as independent contractors.

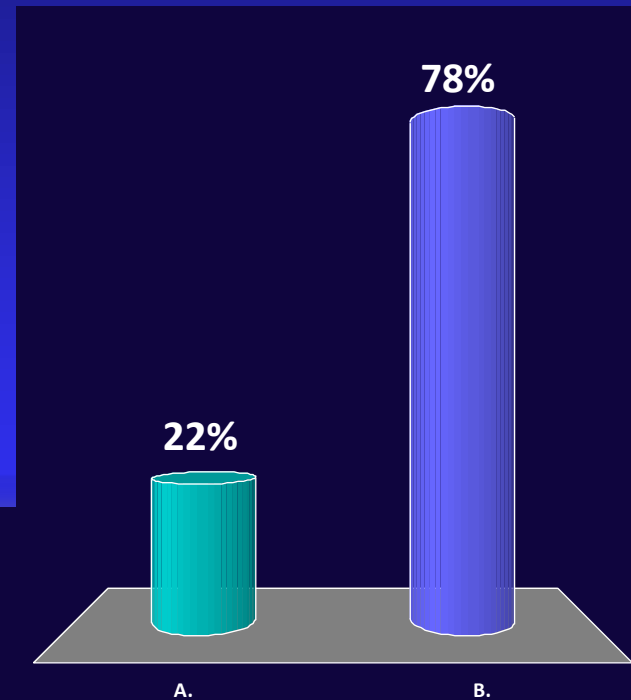
## Can I do that?

A. Yes

B. No



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Yes, but....

It is *INCREDIBLY* risky.

Do you *really* know what you are biting off?

Are you willing to give up that much control of  
your shop?

Do you have the budget and stomach for all the  
IRS audits and lawsuits?

(even if you win...)



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Thank You!  
Human Resources  
Committee

Cory King – Chair

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