



# South Dakota Marijuana Legalization

Presented in Partnership With  
South Dakota Manufacturing & Technology Solutions

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# About Optima

## **Our Purpose:**

We help organizations get better results through people.

We do this by augmenting your team to develop and implement modern, high impact HR strategies, practices, and programs that support and enable business growth and profitability.

Our model is direct, inside outsourced HR leadership and HR support to businesses – contract fractional HR executives, specialists, and generalist support.

# Agenda

- What the ballot measures said
  - Amendment A: Recreational Marijuana Legalization
  - Measure 26: Medical Marijuana Program
- Considerations for employers
- What's next

I have to...

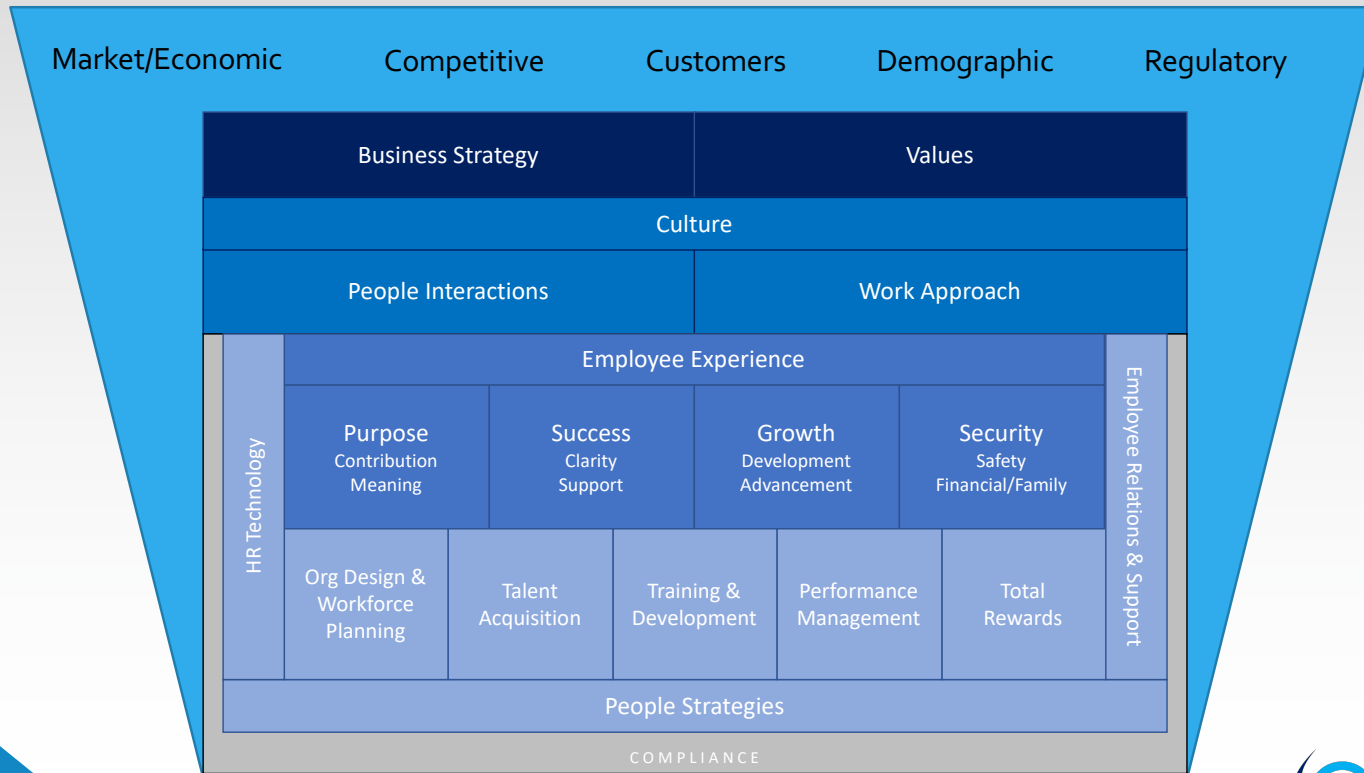
- Not an attorney
- Not legal advice

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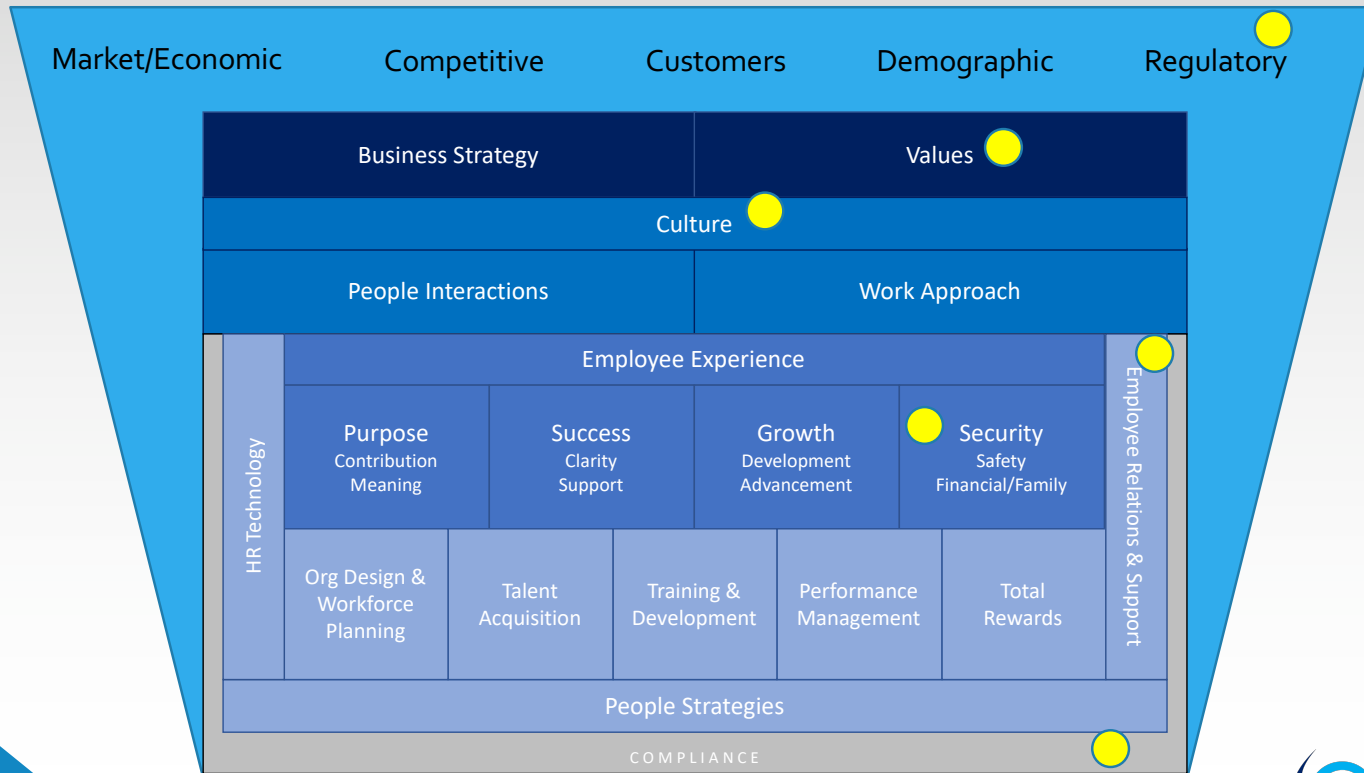
# Optima Talent Strategy Framework



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# Optima Talent Strategy Framework



## Amendment A: Recreational Marijuana Legalization

- For persons 21 years of age:
  - Possess, use, process, transport, share up to an ounce
  - Possess, plant, cultivate, harvest, dry, process or manufacture up to three plants if
    - Kept at one private residence, are locked and out of view
    - No more than 6 total in the residence or on the grounds at one time
    - In a jurisdiction where there is no licensed retail store
  - Help another person or allow property to be used
  - Possess, use, deliver, distribute, manufacture, transfer or sell marijuana accessories to someone 21 years old or older

## Amendment A Does NOT...

- Limit or affect laws that prohibit or otherwise regulate:
  - Operating or being in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while consuming or under the influence of marijuana;
  - Smoking marijuana within a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is being operated;
  - Smoking marijuana in a location where smoking tobacco is prohibited;
  - Consumption of marijuana in a public place, other than in an area licensed for consumption;
  - Conduct that endangers others;
  - Undertaking any task under the influence of marijuana, if doing so would constitute negligence or professional malpractice.



## For businesses and property owners...

- Amendment A does NOT:
  - Require that an employer permit or accommodate conduct allowed by the change;
  - Affect an employer's ability to restrict the use of marijuana by employees;
  - Limit the right of a person who occupies, owns, or controls private property from prohibiting or otherwise regulating conduct permitted by this article on or in that property.

## Measure 26: Medical Marijuana Program

- It establishes ...
  - Legalizes medical use of marijuana and marijuana-based products to treat or alleviate debilitating medical conditions certified by the patients' practitioners.
  - Patients must obtain a registration card from the State Department of Health.
  - Non-residents may use out-of-state registration cards.
  - Patients may designate caregivers to assist their use of marijuana; the caregivers must register with the Department.

## Measure 26: Medical Marijuana Program

- It establishes...
  - Cardholders may possess 3 ounces of marijuana and additional amounts of marijuana products.
  - Cardholders allowed to grow plants may possess a minimum of 3 plants, as well as marijuana and products made from those plants.
  - Legalizes marijuana testing, manufacturing, and cultivation facilities, as well as marijuana dispensaries.
  - Limits State and local law enforcement's ability to assist Federal law enforcement authorities.

## Employer Considerations

Section 2. A cardholder is not subject to arrest, prosecution, or penalty of any kind, or denial of any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau for...

## Employer Considerations

Section 22. Except as provided in this Act, a registered qualifying patient who uses cannabis for a medical purpose shall be afforded all the same rights under state and local law, as the person would be afforded if the person were solely prescribed a pharmaceutical medication, as it pertains to:

1. Any interaction with a person's employer;
2. Drug testing by a person's employer; or
3. Drug testing required by any state or local law, agency, or government official.

## South Dakota Discrimination Laws

- Same definition of disability the federal government used in the Americans with Disabilities Act (ADA) of 1990.
- Follows the ADA rules and regulations.
- Covers all employers.
- Reasonable accommodation.
- ADA normally would not apply to medical marijuana because it is illegal. SD language gets around this.

## Employer Considerations

Section 4. Qualifying card holder patients are presumed to be acting lawfully if they are within possession limits. Can be “rebutted” with evidence.

## Employer Considerations

Section 24. No employer is required to allow the ingestion of cannabis in any workplace or to allow any employee to work while under the influence of cannabis. A registered qualifying patient may not be considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.



## Employer Considerations

Section 28. Nothing in this Act prohibits an employer from disciplining an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis. (See section 24 – standard for “under the influence”.)

## Employer Considerations

Section 38. Until a qualifying patient who has submitted an application and the required fee to the department receives a registry identification card or a denial, a copy of the patient's application, written certification, and proof that the application was submitted to the department is deemed a registry identification card.

## What now?

- Many issues to be resolved
- Take action now where you can to be prepared for the new law going into effect – July 1, 2021
- Start with your values, culture, and “employee experience” promise

## Re-evaluate Zero-Tolerance

- Federal requirements still apply (federal contractors/DOT)
- Your labor pool WILL shrink
- Setting yourself up for failure?
  - Medical marijuana AND state anti-discrimination laws

## Review Policies

- Consider “what if” possibilities
- Pot does NOT equal alcohol
- Understand the limitations of testing
- Look to how you handle alcohol and opioids for guidance
- Focus on safety and fitness for duty
- Consult with your insurance carrier and employment attorney

## Take Action

- Communicate with employees to set expectations
- Be clear in your policies and be consistent in applying them
- Train leaders in identifying impairment
- Engage in the interactive process with requests for accommodation

# Final Questions

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