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***Hiring to Firing Podcast — Managing Employee Compliance in Highly Regulated Industries*****Hosts: Tracey Diamond and Evan Gibbs****Guests: Josh Riggs****Recorded 6/17/24****Evan Gibbs:**

Thinking about the topic of today's discussion, which is handling employee issues in a highly regulated environment, this makes me think back to years ago, probably seven, eight years ago. I traveled with some of our other attorneys at the firm and we went to visit a client in Colorado to see firsthand their operations in the marijuana industry.

So they had the growth facilities, had the retail facilities, and we got to see all that, up close. And it was really interesting. I think we were expecting something not very sophisticated, you know, almost somebody in a tie dye, selling bags of weed.

And it was so much more sophisticated than that. It was really more - in the retail stores, it was much more like an Apple store as opposed to some kind of head shop that we had sort of envisioned.

**Tracey Diamond:**

Times have really changed, haven't they?

**Evan Gibbs:**

Yeah, they have. The industry is very much matured. What are your thoughts on that, Tracey?

**Tracey Diamond:**

I agree with you. Not only is it a highly regulated industry, but it's also just become this burgeoning industry across the country, and a complicated and sophisticated one in order to make sure that you're in compliance with all the various laws that are involved.

Stay tuned and listen in to this episode where we talk with Josh Riggs at Social Cannabis about exactly that - employing workers in a regulated industry.

[INTRODUCTION]

**Evan Gibbs:**

Hey, everybody. Welcome to *Hiring to Firing Podcast*. I'm Evan Gibbs, and with me, as always, is my very talented co-host, Tracey Diamond. We're both partners at Troutman Pepper, and together, we've dealt with just about every employment issue that you could imagine. Everything from hiring, to firing, hence the name of the show, and all the crazy unbelievable stuff in between.

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[EPISODE]

**Evan Gibbs:**

We're excited today to welcome our guest, Josh Riggs, who's the owner of Social Cannabis based out of Denver, Colorado. Welcome, Josh.

**Josh Riggs:**

Well, thank you very much for having me.

**Evan Gibbs:**

Yes. Well, we're really glad to have you on as our guest today, and we thought it'd be, as we used to do with our guests, we thought it'd be great for you to just tell us a little bit about your background and your company.

**Josh Riggs:**

Well, thanks again for having me. I joined the cannabis industry in 2017. Prior to that, I spent the better part of a decade as the Director of Client Services for a company that does tax resolution work, and so started cutting my teeth as a manager and someone who hires and fires, and like you said, everything else in between. At that time, like I said, I took the leap of faith in 2017 joining the cannabis industry. I was hired as the chief operating officer for a well-known dispensary group called Star Buds.

I spent about six years working with them, again, overseeing all operations, everything from their manufacturing, and cultivation, and retail focus. We opened a lot of stores in a lot of different states. So again, ton of experience working with people and managing a lot of employees on a day-to-day basis. Star Buds sold its Colorado retail assets in early 2022 and it was at that time that my partners and I got together and started working on our new project, which is Social Cannabis. We were actually the first social equity dispensary licensed by the city of Denver, in the state of Colorado.

We opened our first store in April of 2022, in North Denver. Since that time, we've gone on to open a few more stores, and we're actually working on our fifth and our sixth right now, which I think is interesting, especially in the Colorado retail market and cannabis market, which is taking a lot of heat lately in terms of just people closing stores. I think Politico came out with an article last week, talking about the collapse of the Colorado cannabis market and some interesting stuff in that article. But back in the day, I think people could just open up a store anywhere. People were dying to work in the cannabis industry.

I remember when I first started even in 2017, hiring people was never a challenge. Finding great people are always a little bit harder. But people wanted to work in this industry and would do just about anything to have that opportunity. Things have changed quite a bit today. At Social Cannabis, I think one of the most challenging things running our business is hiring people and managing people and trying to build that right team. There's still a lot of people in the cannabis industry who think that working at a dispensary is just about getting high all day and selling

weed. But we look at this as much more of a traditional retail experience for our customers. So, that is definitely one of the bigger challenges that we face.

**Tracey Diamond:**

Josh, I'm curious about what you said about the retail industry collapsing in Colorado. What do you think is causing that? While all the sudden the big shift?

**Josh Riggs:**

That's a great question. I think it's actually the million-dollar question. One of the interesting quotes from that article in Politico was, "How do you screw up 50% margins?" When this industry was just beginning in Colorado, and I think a lot of new states that are emerging markets, their margins are great. There's lack of competition. But as the market matures, which is the case now in Colorado, you don't have that luxury. You can't just open your doors and expect people to line up outside and buy bad products at inflated prices. As the market has continued to mature, competition has continued to mature. I think what you're seeing is what you see in industries outside of the cannabis market, right?

If you're not a good operator, if you don't provide the best customer service, and if you don't build a great brand, and have a great team, you're going to struggle. It's just not as easy as it once was. Plus, I think that a lot of people would point to continued restrictions from a compliance standpoint, high taxes. I mean, in some of the local jurisdictions here in Colorado, you're paying 25% to 30% in sales tax. That's very difficult to manage and then you sprinkle in a little 280E on top of that, it's a very challenging market to survive in, especially as it's matured, and as competition has become stronger.

**Evan Gibbs:**

I'm curious. So, you've gone from one to opening your fifth and sixth doors. How many employees did you start with? How many do you think you'll have once you get those two new stores open?

**Josh Riggs:**

Yes. I mean, when we first started, we had five employees, and all store level employees. We operate a very lean and efficient operation, and so we don't have a tremendous amount of overhead, like what you call the corporate level. We actually only have one employee. The rest of us are partners and we work in the business as owners. I mean, we spend seven days a week working on this business. But to answer your question, more specifically, we started off with five. And I think when we get to the sixth store, we'll have somewhere around 50 plus employees.

**Tracey Diamond:**

That's always the inflection point we found in terms of having to really pay attention to employment laws once you hit that 50-employee mark.

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**Josh Riggs:**

Oh, absolutely.

**Tracey Diamond:**

So, what Josh said really is a great segue into our topic for today, which is handling employee issues in a regularly regulated environment. For this topic, we're going to use the classic cult movie *Half Baked*, starring Dave Chappelle. A comedy centered around certain aspects of the marijuana culture. In our first clip, we hear Dave Chappelle's character, a janitor at a medical research facility, briefly describing his willingness to be a test subject for FDA experiments on the medicinal uses of marijuana. Let's take a listen.

[CLIP]

**Scientist:**

The Food and Drug Administration are having us do a study to determine what, if any, are the medicinal purposes of marijuana.

**Thurgood:**

Wow. if you ever need a guinea pig, let me know.

[CLIP END]

**Evan Gibbs:**

Josh, I think to help frame the issue for listeners who may not be super familiar with the various types of marijuana and the licensing aspects. Can you tell us what's the general distinction between medical and recreational cannabis in Colorado?

**Josh Riggs:**

This is a topic that has really evolved tremendously over the last couple of years. I think the medical market in Colorado is all but extinct. I mean, there are definitely still some medical markets in Colorado Springs, and there are definitely still medical stores. I think some of them are probably still fairly successful. But over the last few years, you've seen a tremendous shift towards the retail market. I don't know whether it's the inconvenience of having to have a medical license, or the fact that I'm sure that the state and the local jurisdictions for the most part, are trying to push licenses towards the recreational use because of the tax implications. But the medical markets really died down a lot here.

So, for us, our focus is retail marijuana, and to us, that means that anyone over the age of 21, who's a consumer, or curious about cannabis, those are our customers and that's our demographic.

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**Tracey Diamond:**

I'm actually kind of curious about that. I've always wondered, is it a different product that gets sold for medicinal purposes, as opposed to recreational purposes? If that's so, then does the fact that the medical marijuana side of the business has died off, make it harder for people who need to get the strain they need for medical purposes?

**Josh Riggs:**

Yes. I mean, from the perspective of products available in a medical store versus a retail store, the biggest differences you're going to find is potency. You could go into a retail, or you could go into a medical dispensary, and you could buy a single edible, that maybe it was 500 milligrams. Whereas at the recreational or the retail stores, we're limited to 100 milligrams per serving for any edible. That's the biggest difference is potency.

I think, absolutely. For people that are using cannabis for medicinal purposes, sometimes they need those higher dosages, and we'll hear it from medical patients that come in to the retail stores just because it's more convenient. They have to buy three or four edibles to kind of accomplish that same effect. Make no mistake about it, a lot of people that do shop at the stores, and I've opened stores in Oklahoma, I've opened stores in Missouri and in Chicago, there's always a fairly significant portion of customers that are looking for some medical impact from their cannabis use.

**Evan Gibbs:**

Interesting. I'm curious, moving back towards sort of employment-facing issues, I know that the cannabis industry is heavily regulated. But I'm curious, are there any particular rules that apply specifically to employees or to cannabis employers?

**Josh Riggs:**

Like you said, I mean, this is a heavily regulated market. Any employee at a dispensary or any marijuana facility is required to be licensed by the state of Colorado, the Marijuana Enforcement Division. So, every employee has to have a badge. That's what we call them. Those badges have to be worn and displayed above the waist at all times when they're in the marijuana facility. That's maybe the most obvious difference, is you have to be licensed to work in a dispensary. But there are other rules, which you would think are probably common sense in most industries. But there's a zero-tolerance policy and it's actually against the rules and regulations for any consumption of cannabis to happen on site.

That's a big one. Navigating those waters of, I'm speaking generally here, of employers not wanting to have to over police their employees, but also making sure that they're not consuming cannabis while they're at work, and that's a difficult thing to navigate.

**Evan Gibbs:**

I'm sure that like you, a partner in a business, and folks at the corporate level of a marijuana business have to think about compliance with rules and regulations. But are there specific rules that retail employee, your frontline workers selling the product. Are there particular rules or

regulations that they have to be aware of and cognizant of that you could get in trouble if they don't follow those rules?

**Josh Riggs:**

Yes. I mean, thanks for teeing up this question, because the fact is, is that our frontline workers, front of the house, we call them budtenders. Our budtenders, they make pretty good money between their hourly wage and their tips. They're making a good living. But they are also taking on a lot of responsibility. If for some reason, one of our employees were to allow someone without a valid ID or under the age of 21, into the dispensary, and a transaction were to be completed, the budtender or the employee that let them in, and the budtender or the employee that completed the transaction, they could be found liable for a number of different violations. There could be criminal charges. Certainly, there could be financial penalties, upwards of \$10,000, I believe, for a first-time offense on something like that.

So, this is probably the most important aspect of working in the marijuana industry. We say it all the time and we try to ingrain this in our employees that we're a compliance company first. That is the number one focus for everything that we do, is compliance. We have a very robust ID-checking process. We talk about it all the time. We try to make it foolproof and dummy proof. But it's always a risk. Probably, the one thing that keeps you up at night is knowing that whether it'd be a store manager, an assistant store manager, or one of our budtenders, we trust them tremendously to follow these rules and regulations. If they make a mistake, the old phrase that stuff rolls downhill, it really comes up to us. And if a mistake is made, it could cost us a lot, up to and including these businesses that we've worked so hard and put so much time and resources into opening. It's all on the line when we talk about these rules.

**Tracey Diamond:**

You had mentioned that your budtenders can get tips and that some of their income is supplemented with tips. I wonder if that leads to challenges with avoiding the temptation for them to accept kickbacks. You have someone comes in who's under 21, or otherwise comes in, and wants more maybe than what they're legally permitted to buy at once. Is there that danger that the tipping is going to make the budtender look the other way?

**Josh Riggs:**

Wow, this is a good question. Honestly, not something that we've contemplated or seen firsthand.

**Tracey Diamond:**

That's good.

**Josh Riggs:**

I mean, hearing you say it, I'm like, "Hmm, maybe it does." But I think the answer is hopefully not. Again, our employees are making a really good living. They still have a lot of fun. As much as we talk about traditional retail, I mean, let's be honest here, we're still in the fortunate position to be selling cannabis products, and our customers are still really excited when they come in the

store. If you've ever worked in the service industry, or you've ever done other traditional retail, sometimes people aren't very nice to their staff, to their servers, or the person behind the counter. But we're lucky, man. I mean, most of our customers come in and they're excited to be there. We still see a lot of tourists. We still see a lot of people that are as excited as you would expect them to be when they walk into a dispensary and they see all of this selection of products. I mean, to really specifically answer your question, I haven't seen it.

**Tracey Diamond:**

That's good to hear. I'm glad to hear that. I'm trained to look for all the bad things to happen.

**Evan Gibbs:**

And I'll tell you, I bet one thing that will be interesting for our listeners who don't work in the cannabis industry, is any I don't know signs, symptoms, anything like that, that over the course of your working in the industry, you've learned to identify signs of people possibly being under the influence of marijuana at work. The reason I say that is because I think our listeners probably already know. But just in case they don't, there's not currently a test on the market, a drug tests on the market, that can say whether or not someone is under the influence of marijuana at the time that they took the test.

Of course, the testing that will say, whether or not it's in their system, but whether or not they ingested it a week ago, or a few weeks ago, or an hour ago, the testing isn't that sophisticated. One question that I've had come up from time to time in my career is, if we prohibit someone from being under the influence of marijuana at work, but the test can't say, really whether they are or not, how do we know if someone is? We've always made the joke to people, well, you just lock them in a row with a bag of Cheetos and see if they eat them or not. But other than that, I'm just curious if there's anything that you've ever – any words of wisdom that you could pass along in that respect?

**Josh Riggs:**

Yes. I mean, other than the food test, I don't know that there is much of a blueprint for this. The truth is, if someone's a regular daily consumer of cannabis, they could be under – I mean, they could have THC in their system and you might never know, right? A lot of people can function with THC in their system.

Now, again, I'm not advocating for driving while under the influence of marijuana or anything like that. But I think there are a lot of people that use cannabis daily, and you might never know it. For us, we look for obvious signs. The way we kind of think about this is, if we don't know, and we have no reason to ask, then we leave it at that. But if somebody clearly reeks of marijuana, like, they just went outside and smoked a joint, and they come back in and we can smell it, that's a problem. They'll be asked to leave. If somebody has got the classic bloodshot eyes, or is slurring their words, or any one of those number of things that you would associate with someone "being high", then that becomes a problem.

For us personally, we just have a zero-tolerance policy on the shop. If someone's caught high at work, or we suspect them consuming cannabis on site, we let them go.

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**Tracey Diamond:**

How do you handle it at the applicant process? Because we represent a lot of multi-state employers and I know, just grappling with various state laws on drug testing, or marijuana testing, specifically at the applicant stage, can be very difficult for multi-state employers, because the laws are really all over the place. Do you know what Colorado law is? How do you handle ensuring that people that you're hiring aren't basically under the influence at the get go?

**Josh Riggs:**

Yes. Again, this is somewhat of a non-issue for us. When we're going through interviews, and we're going through the hiring process, we weed candidates out based on their interview. If somebody's stumbling around their word, or seems to be high, or they say something like, "Oh, man, I can't wait to be high every day at work." Those are huge red flags and we move on. We've never given drug tests to anybody, not within our purview, and it's not a requirement. So, we don't do it.

**Evan Gibbs:**

I'll tell you, that's a great point to introduce our second clip, and in this one, we hear a research scientist at the facility where Dave Chappelle's character works. He's asked to go and retrieve a large brick of marijuana from another area of the research facility for the scientist. Let's take a listen to this next clip.

[CLIP]

**Scientist:**

I know this isn't your responsibility, but would you be here and run this down to the supply department for me? It's on the second floor.

**Thurgood:**

Just run this down?

**Scientist:**

Yes, but make sure you bring the order right back to me. I need it ASAP.

**Thurgood:**

There you go.

**Pharmacist:**

This all you need?



**Thurgood:**

I guess, I don't know. Okay. [sniffs] Either someone's having a party or somebody forgot to do their shirt laundry.

**Pharmacist:**

Here you go. One pound of marijuana. And you can sign for it right here.

**Thurgood:**

I, I sign for this, and- it's mine? I take it? Oh, yeah! Thank you. Thank you very much! Some good sh\*\*.

**Scientist:**

Ah, hahahahaha! Oh, thank you. Thank. You. Thank—YOU!!!.

[CLIP ENDS]

**Evan Gibbs:**

Obviously, in that clip, Dave Chappelle's character, who, I guess, it's hopefully obvious, is a self-professed stoner. He obviously did not want to turn over the marijuana to the scientist. I think that really goes to some of the questions that we have been talking about, with respect to employees wanting to sample products or be under the influence at work. That does raise one question I'm curious about, and I guess this is sort of a background question. First, to tee it up is, Josh, do you grow your own product? Or I guess, is that all outsourced by you?

**Josh Riggs:**

Yes. We are strictly wholesalers, so we don't produce or grow any products. This market here in Colorado is mature enough that we let the people who are really good at that do that. We have the luxury of buying the best products from everybody.

**Evan Gibbs:**

Okay. I'm curious, and since you don't grow, I know you deal with the raw product, with the flower, I'm sure. What is your, I guess, just overall the industry, what's your experience with any kind of employee theft of that type of product? I know that a lot of the products, they're individually sealed and either have barcodes. It's like buying a bag of gummy bears, really. So, it seems like it'd be fairly easy to track, but something that's easier to, I guess go missing, something like plant particles, for lack of a better description. Is that an issue in the industry in your experience?

**Josh Riggs:**

I think almost certainly it is. If you don't have really well-designed and implemented inventory control processes, the opportunity is great for employee theft. We're talking about thousands of

SKUs in our store. We do deli-style flower. And we do have hundreds, if not thousands of different SKUs in our inventory catalog. That inventory process is burdensome. If you're not paying attention, I think certainly you could run into those issues. No matter how much you try to take steps to avoid this kind of problem, for example, we have a fantastic employee discount. We have great vendor partners who provide tons of samples to give our staff opportunities to sample products. But no matter how much you do those things, employee theft is a real issue. Like I said, you have to pay attention.

**Evan Gibbs:**

I'm curious, in Colorado, and again, this is just industry-wide, not anything specific to you. But is there still a black market in Colorado? I mean, are there still people that can sell just unregulated product on the street? Is that an issue at all?

**Josh Riggs:**

I don't know. I don't see it. I guess I'm kind of out of the game. Yes, I don't see it. I'm sure that there is a little bit. But I do think that Colorado is mature as it is, has gotten to a point where that being one of the primary objectives for the legalization of marijuana, and I think we've accomplished it fairly well. Obviously, the crime statistics will show that there's not a lot of that happening. I don't know if it's because there's not a lot of enforcement or it's just not out there. But I certainly don't see it.

Interestingly, I was in New York last week, the black market still very much alive there. You could be walking down any number, any one of those streets and there'll just be a weed van parked on the side of the street with a full menu. They look to be legitimate operators. But in other states, I think it's still a real problem.

**Tracey Diamond:**

I wonder why that is? Why it wouldn't be a problem in Colorado, but it's still a problem in New York? Do you think it's the maturity of the market?

**Josh Riggs:**

I think that's a big part of it. Also, Colorado being one of the pioneers in this movement, they got to really build this industry from the ground up. We had that advantage. But I think in a place like New York, where they haven't had legal marijuana for the last decade, what you saw is a lack of enforcement and sort of this quasi-acceptable industry that had the time and opportunity to kind of take root out there. Now, we've got legislative changes and legalization happening. But you've already got these people who, like I said, they were operating and living in a gray area. You walk into one of those on-licensed dispensaries out there and you don't know what you're looking for, you wouldn't know the difference between that and one of the ones that is licensed. But I think the delay in legalizing these markets creates a weird opportunity for, I don't know, if it's fully black market, but certainly gray market.

**Tracey Diamond:**

We'll have to see in another 5 to 10 years whether that gets cleaned up, I guess.

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**Josh Riggs:**

I know that they're putting a lot of enforcement out there. They're closing a lot of those shops up, but it's going to be tough to undo that. It's become a little bit a part of that counterculture almost, from what I could see when I was out there.

**Evan Gibbs:**

This has all been really interesting. We really appreciate you taking the time to join us today, Josh. This has been a really great, very interesting discussion. Listeners, thank you so much for joining us for this installment of the podcast. If you haven't already, please be sure to subscribe. We're available on all the major platforms and we'd love for you to leave us a review to let us know what you think. Please reach out to us via email or on social media, LinkedIn, and let us know if there are any potential topics you'd like to hear discussed. We're always open to that. So, thanks again for listening and we'll catch you next time.

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