



## WHAT EMPLOYERS NEED TO KNOW ABOUT LEGALIZED MARIJUANA

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On June 25, 2019, Illinois became the 11<sup>th</sup> state in the country to legalize the recreational use and purchase of marijuana. The legislation takes effect on Jan. 1, 2020. Passage of the Act raises questions for employers.

The law provides strong workplace protections for employers. First, employers can forbid employees from using cannabis at work (including in parking areas and company-controlled vehicles), or being under the influence of cannabis while performing job duties or while on call. Second, employers may discipline, or terminate, an employee for violating an employer's reasonable workplace drug policy, including zero tolerance or drug-free, when an employee appears to be under the influence of cannabis. The employer must possess a "good faith belief that the employee manifests specific, articulable symptoms while working that decrease or lessen the employee's performance." Symptoms can include signs related to speech or physical dexterity. Where a good faith belief exists, employers may also subject employees to random drug tests. As marijuana can linger in the system, a drug test result will be more persuasive if paired with obvious and documented evidence of demonstrated impairment while on duty. Thus, employers should document symptoms of drug use, particularly following any workplace accident. Prior to any employee discipline, an employer must give a reasonable opportunity to contest the basis for discharge.

Importantly, the law amended the Illinois Right to Privacy in the Workplace Act, which prohibits employers from disciplining or discharging an employee for using a lawful product off of the employer's premises during non-work hours, to include marijuana use. The Act applies to applicants as well. Under that Act, applicants or employees may recover actual damages, attorneys' fees, costs and statutory penalties for violations. Therefore, employers must be cautious in rejecting any applicant, or

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implementing any discipline, that may be based upon lawful, off-duty and off-premises conduct. For example, refusing to hire an employee who tests positive for marijuana may be in violation of the Act.

In light of this (and prior) legislation, employers may wish to: (1) consider whether to continue to include cannabis and its byproducts in pre-employment drug screening; (2) consider any potential amendments to their employee handbook or workplace drug policy; (3) evaluate any reasonable accommodation policies (including where medical marijuana use is involved); (4) train managers on marijuana use impairment signs; and (5) establish written policies for an employee to contest any disciplinary action.

Please contact Rachel Yarch, 312-840-7029, or Alex Marks, 312-840-7022, with any inquiries or requests for assistance.