

Employers' Anti-Drug Policies Remain Enforceable under Colorado's Marijuana Regulation Act

By Ryan P. Lessmann

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“Amendment 64: The Regulate Marijuana Like Alcohol Act of 2012,” amends the Colorado state constitution to allow persons over 21 to possess up to one ounce of marijuana and grow up to six marijuana plants for personal use. It also authorizes the licensing of retail facilities for sales of marijuana to adults. The amendment was approved by Colorado voters on November 6, 2012. Public consumption and unlicensed sales in the state will remain illegal.

The licensing provisions of the amendment will not go into effect until 2014. This is intended to provide the state time to develop regulations for the sale and taxation of marijuana. The personal use and cultivation provisions, however, become effective as soon as Governor John Hickenlooper signs the bill, which by state law must be within 30 days of the November 6 vote.

How does this affect Colorado employers? Amendment 64 provides explicitly, “Nothing in this section is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees.”

Accordingly, employers may continue to enforce their drug-testing policies against employees and applicants who test positive for marijuana, to publish and enforce policies prohibiting the possession or consumption of marijuana during working hours, and to discipline any employee whose job performance is impaired because of the use of marijuana.

If you have questions about the implications of Amendment 64, anti-drug policies in Colorado or any other drug testing issues, please contact our Drug Testing and Substance Abuse Management practice or the Jackson Lewis attorney with whom you regularly work.

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