Ohio Passes Recreational Marijuana Law: What Employers Should Know

By Kathryn J. Russo, Anthony P. McNamara &

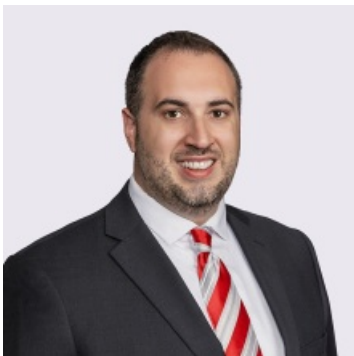November 8, 2023

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Joining 23 other states, Ohio has passed a recreational marijuana law. On November 7, 2023, Ohioans voted to pass an initiative legalizing and regulating the cultivation, sale, purchase, possession, use, and home growth of recreational marijuana. The new law does not require an employer to "accommodate an employee's use, possession, or distribution of adult use cannabis."

The ballot language allows the sale, purchase, and possession of marijuana by Ohio residents aged 21 and older. In December, adults can legally possess up to 2.5 ounces of marijuana, possess up to 15 grams of cannabis extract, and grow up to six marijuana plants in their primary residence, or up to 12 plants per residence with two or more adult residents.

Ohioans purchasing recreational marijuana are subject to a 10 percent excise tax, along with state and local sales taxes. According to the ballot text, some of the revenue collected from these taxes will support social equity and jobs programs.

Ohio's medical marijuana program remains in effect and unchanged by the new law.

The law will become effective 30 days after the vote, on December 7, 2023. Further, the new law authorizes Ohio's Department of Commerce to create rules on how the program will work.

Employer Rights

Like Ohio's medical marijuana program, the new law does not require employers to permit or accommodate an employee's use, possession, or distribution of marijuana. Further, employers are not prohibited from refusing to hire, discharging, disciplining, or otherwise taking an adverse action against an individual because of the individual's use, possession, or distribution of marijuana.

There is no cause of action under the new statute for employees or applicants based on any such action by an employer. This is true even if an employee's marijuana use is lawful and off-duty.

The new law also permits employers to continue enforcing drug testing policies, drug-free workplace policies, and zero-tolerance drug policies.

For purposes of unemployment compensation, an employer has "just cause" to terminate an employee for use of marijuana in violation of the employer's drug policy.

Next

Ohio employers should consider whether their current drug policies continue to serve their business needs. Employers also should carefully review drug policies to ensure compliance with Ohio and federal law and make sure their policies are communicated clearly to employees and enforced consistently.

Should you have questions about marijuana-related legal developments in Ohio or around the country, please contact the Jackson Lewis attorney with whom you usually work or a member of our Drug Testing and Substance Abuse Management team.

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