

Recreational Marijuana and the Illinois Employers

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Recreational Marijuana

- HB 1438: P.A. 101-27
- Effective 6/25/19 (no sale or use until 2020)
- Section 10-50 of Act recognizes:
 - Employer can adopt zero tolerance/drug free workplace policies
 - Employer can maintain drug testing policies
- Employer policies can prohibit in the workplace/on-call:
 - Smoking;
 - Consumption;
 - Storage; or
 - Use

Illinois' Cannabis Regulation and Tax Act

What it does:

- Allows employers to implement and enforce “reasonable” zero-tolerance rules
- Generally equates marijuana to other regulated-but-legal substances, like alcohol
- Prohibits termination / discipline based on user “status”
- Creates legal gray-area for off-duty use and drug testing

What it does not:

- Outlaw all zero-tolerance drug-free workplace policies
- Protect marijuana users against discipline or termination for on-the-job use, impairment, possession, or sale
- Require employers to permit on-the-job medical use
- Require employers to violate federal law / federal contract

Recreational Marijuana (cont.)

- Employer may prohibit an employee from being under the influence of or use cannabis:
 - In the workplace
 - While performing duties
 - While on call
- No limits/restrictions on discipline/termination for violations of reasonable employer policies
 - Positive drug test alone sufficient?
 - Impairment at work required?

Recreational Marijuana (cont.)

- Workplace defined broadly
 - Employer's premises
 - Parking area under employer control
 - Vehicles (owned or leased)
 - Areas used by employees performing duties
 - Telework?

Recreational Marijuana (cont.)

- Employee may consider impairment exists:
 - “Good faith belief”
 - Based on specific, articulable symptoms
- Symptoms include:
 - Decreased/lessened performance
 - Speech/dexterity/agility/coordination
 - Demeanor/irrational or unusual behavior
 - Negligence or carelessness
 - Involvement in accident resulting in serious damage to equipment/property
 - Carelessness that results in injury

Recreational Marijuana (cont.)

- Act does not create or imply a cause of action:
 - Requiring drug/alcohol test
 - Disciplining for refusing to take drug/alcohol test
 - Disciplining/terminating “based on the employer’s good faith belief that an employee used or possessed cannabis ... in the workplace or while on call”
 - Disciplining/terminating “based on the employer’s good faith belief that an employee was impaired as a result of the use of cannabis, while at the workplace or while performing the employee’s job duties or while on call”

Recreational Marijuana (cont.)

- If intend to discipline/terminate:
 - Must afford employee a reasonable opportunity to contest impairment finding
- Vehicle Code (§ 11-501.2):
 - Blood: Greater than 5 ng
 - Urine: Greater than 10 ng
 - Presumed under the influence of marijuana

Recreational Marijuana (cont.)

- Illinois Right of Privacy in the Workplace Act amended to cover recreational marijuana
- Act generally prohibits employers from taking any adverse action against an individual for the use of a “lawful product” away from the workplace or work time
 - Includes “lawful products” under state law
- Impact on drug testing circumstances:
 - Pre-employment?
 - Random?
 - Post-accident (without reasonable suspicion)?



Questions?

THANK YOU

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