

Drug & Alcohol Testing Law Advisor

Developments in Regulating Workplace Drug and Alcohol Testing

Ohio's Employer-Friendly Medical Marijuana Law Takes Effect September 6, 2016

By Kathryn J. Russo on August 10, 2016

Ohio's new medical marijuana law becomes effective on September 6, 2016, although it may take up to two years for implementing regulations to be written and for dispensaries and the patient registry to become operational. House Bill 523, the "Ohio Medical Marijuana Control Program," allows people with certain medical conditions, upon the recommendation of a physician, to purchase and use medical marijuana. Qualifying medical conditions include AIDS, amyotrophic lateral sclerosis (ALS), Alzheimer's disease, cancer, Crohn's disease, epilepsy or seizure disorders, multiple sclerosis, chronic or intractable pain, Parkinson's disease, and PTSD, among others.

The law allows the use of marijuana in the form of oils, edibles, plant material, tinctures, patches and vapor, but does not permit smoking of marijuana. Patients who use medical marijuana are prohibited from operating a vehicle while under the influence of marijuana.

Of the many states that have medical marijuana laws, the Ohio medical marijuana law is one of the most employer-friendly. Specifically:

- Employers still have the right to establish and enforce a zero-tolerance drug policy or drug testing policy, and the new law does not give employees the right to sue their employer for taking action against them related to the use of medical marijuana;
- Employers are not required to permit or accommodate an employee's use, possession or distribution of medical marijuana;
- Employers can still terminate an employee or refuse to hire an applicant because of use, possession or distribution of medical marijuana even if he or she is using marijuana off-duty and in compliance with the statute;
- For purposes of unemployment compensation, an employer has "just cause" to fire an employee for use of medical marijuana in violation of the employer's drug policy;

- Employers still may obtain workers' compensation premium discounts for participation in the state's drug-free workplace program; and,
- An employee may be deemed ineligible for workers' compensation benefits if the employee was under the influence of marijuana at the time of the injury and that use was a cause of the injury, even if the marijuana use was recommended by a physician.

Employers should take this opportunity to review their drug policies to make it clear that, even though Ohio law permits the use of medical marijuana, it is not tolerated in the workplace and that disciplinary action will be taken for violations of the policy even where the marijuana was used off-duty and prescribed by a physician. This is particularly true because marijuana still is illegal under federal law. If the U.S. Drug Enforcement Administration takes action to reschedule marijuana from a Schedule I drug to a Schedule II drug (under the Controlled Substances Act), employers may need to re-evaluate their policies to comply with the requirements of the Americans with Disabilities Act and comparable state laws.

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