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Drug and Alcohol Testing Law Advisor
Developments in Regulating Workplace Drug and Alcohol Testing

Rhode Island Legalizes Recreational Marijuana and Protects Off-Duty Use

By Catherine A. Cano on May 26, 2022

Rhode Island Governor Dan McKee signed a bill legalizing recreational marijuana in the state on May 25, 2022. The new law took effect immediately. Adults age 21 and older now can possess up to an ounce of cannabis, may grow cannabis within their primary residence (up to certain limits) and possess up to 10 ounces of cannabis in addition to live plants. Retail sales may begin as early as December 1, 2022.

The law states that employers are not required to accommodate the use or possession of marijuana, or being under the influence of marijuana, in any workplace or other location where the employee is performing work (including remote work).

Employers are permitted to refuse to hire, terminate, discipline or take other employment action based on an individual's violation of a workplace drug policy or because the individual was working while under the influence of cannabis. However, employers are generally prohibited from terminating or taking disciplinary action against an employee "solely for an employee's private, lawful use of cannabis outside the workplace and so long as the employee has not and is not working under the influence of cannabis."

There are exceptions if off-duty use is prohibited by the terms of a collective bargaining agreement or if the employer is a federal contractor or otherwise subject to a federal law or regulation such that the failure to terminate or discipline the employee would cause the employer to lose a monetary or licensing benefit under the law or regulation.

In addition, if an employee works in a job, occupation or profession that is "hazardous, dangerous or essential to public welfare and safety," an employer may adopt and implement policies that

prohibit the use or consumption of cannabis within the 24-hour period prior to a scheduled work shift or assignment. Examples of work that falls under this exception include: operation of an aircraft, watercraft, heavy equipment, heavy machinery, commercial vehicles, school buses or public transportation, the use of explosives, public safety first responder jobs, and emergency and surgical medical personnel. *[But note that drivers of commercial motor vehicles who are subject to the U.S. Department of Transportation's drug and alcohol testing regulations never may use marijuana and will be disqualified from driving if they test positive for marijuana].*

The law also provides for automatic expungement of certain civil and criminal convictions related to the possession of marijuana. All eligible records will be expunged by July 1, 2024. Employers may not require an employee to disclose a sealed or expunged offense unless otherwise required by law.

In light of the new protections for off-duty use of marijuana in Rhode Island, affected employers should ensure their drug testing policies and procedures comply with the law.