

Massachusetts Legalizes the Medical Use of Marijuana

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Making the state the 18th to legalize the medical use of marijuana, Massachusetts voters have approved a ballot question allowing the medical use of marijuana for patients with certain debilitating illnesses. As of January 1, 2013 (the effective date of the law), Massachusetts joins its New England neighbors, Connecticut, Rhode Island, Vermont, and Maine, in eliminating criminal penalties for patients, their physicians and dispensaries. The new Massachusetts law *does not* require employers to accommodate on-site use of medical marijuana or authorize operating a motor vehicle under the influence of marijuana. Although the new law does not directly impact employers, there are some indirect impacts, such as employees with medical marijuana prescriptions seeking workplace accommodations.

Covered Conditions

The new law applies to patients suffering from a “debilitating medical condition,” defined as cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis, Crohn’s disease, Parkinson’s disease, multiple sclerosis, or other conditions as determined by a physician.

Patient Qualification

To qualify for medical marijuana under the law, a patient must obtain a written certification from his or her physician identifying the patient’s “debilitating medical condition” and stating that, in the physician’s professional opinion, the potential benefits of the medical use of marijuana likely would outweigh the health risks. The patient must have a bona fide relationship with the physician providing the certification, and the physician must conduct a full assessment of the patient.

After obtaining the physician’s certification, the patient (or his or her personal caregiver) must apply to the state Department of Public Health (“DPH”) for a registration card, verifying that a physician has provided a written certification to the patient and identifying the patient (or personal caregiver) as exempt from Massachusetts criminal and civil penalties for the medical use of marijuana.

Patients or their caregivers may obtain up to a 60-day supply of medical marijuana from a non-profit medical marijuana treatment center, approved by the DPH. The new law authorizes the DPH to approve up to 35 treatment centers by January 1, 2014.

Allowed to Grow Own Medical Marijuana

Patients whose access to treatment centers is limited by verified financial hardship, a physical incapacity to access reasonable transportation, or the lack of a treatment center within a reasonable distance of the patient’s residence may register with the DPH to cultivate medical marijuana plants sufficient for a 60-day supply. In addition, until the DPH issues final regulations implementing the new law, patients with a written recommendation from their physician may begin cultivating medical marijuana plants sufficient for a 60-day supply on January 1, 2013.

Limitations

The new law does *not*:

1. Require any accommodation of any on-site medical use of marijuana in any place of employment, school bus or on school grounds, in any youth center, in any correctional facility, or of smoking medical marijuana in any public place;
2. Authorize the operation of a motor vehicle, boat, or aircraft while under the influence of marijuana;
3. Require any health insurance provider, or any government agency or authority, to reimburse any person for the expenses of the medical use of marijuana;
4. Require any health care professional to authorize the use of medical marijuana; or
5. Require the violation of federal law or give immunity under federal law.

Penalties

The fraudulent use of a medical marijuana registration card or cultivation registration is a misdemeanor punishable by up to 6 months in the house of correction, or a fine up to \$500. The fraudulent use of a medical marijuana registration card or cultivation registration for the distribution, sale, or trafficking of marijuana for non-medical use for profit is a felony, punishable by up to 5 years in state prison or up to 2-1/2 years in the house of correction.

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Even with the passage of the new law, 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. Jackson Lewis attorneys are available to answer questions about this and other workplace developments. Please contact Partner Andrew C. Pickett, at (617) 367-0025 or PickettA@jacksonlewis.com, Partner Brian Lewis, at (617) 367-0025 or LewisB@jacksonlewis.com, Partner Samia M. Kirmani, at (617) 367-0025 or KirmaniS@jacksonlewis.com, of the Boston office or the Jackson Lewis attorney with whom you regularly work.

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practices

Drug Testing and Substance Abuse Management

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