

What You Need to Know About Florida's Medical Marijuana Program

By Madison Lisotto Whalen

Florida is among the ever-increasing number of states that allow the use of medical marijuana. According to industry sources, the five states with the fastest growing medical marijuana markets are Florida, Illinois, Maryland, Ohio and Oklahoma. In Florida, there are four steps necessary to receive treatment using medical marijuana and/or low-TCH cannabis:

1. Patients must have a "qualifying condition" which includes cancer, Crohn's disease, glaucoma, epilepsy, HIV/AIDS, Parkinson's disease, post-traumatic stress disorder, multiple sclerosis, amyotrophic lateral sclerosis ("ALS") and terminal illness.
2. Patients and their caregivers will then be entered into the medical marijuana use registry by their qualified physician
3. Patients and their caregivers will then apply for their registry identification card
4. Patients fill their orders at one of the licensed medical marijuana treatment centers

What does this mean for Florida employers?

Strictly speaking, employers in Florida are not affected by legalizing medical marijuana in the state. Florida statute section 381.986(15) specifically states that an employer can maintain a drug-free workplace program and is not required to "accommodate the medical use of marijuana in any workplace." Also, marijuana is still illegal on the federal level as it is listed as a Schedule 1 substance.

While Florida employers with drug-free workplace programs can qualify for discounts on workers' compensation insurance premiums, some have been re-assessing their policies such as Fort Lauderdale-based AutoNation who stopped testing for marijuana. Unemployment rates are low and employers often want to keep their options open in order to hire and retain the best employees. Some employers are also considering only testing those employees whose use of marijuana could impact safety, such as operators of heavy machinery. There are certain employees who may have legal claims based on how drug testing was conducted or who was testing. Examples of this include employees using medical marijuana for conditions covered under the Americans with Disabilities Act or employers singling out groups of employees for testing based on race, age or gender. There is also a push to legalize recreational marijuana in Florida which could tip the scales even further.

What does this mean for the Florida cannabis industry?

Demand within the state is significant, but the market is currently dominated by Trulieve, a company capturing 50% of all sales. Florida has licensed 22 vertically integrated operators, with only 12 of those having working dispensaries. This leads to a July 9, 2019 Florida First District Court of Appeals case which held that the state's vertical licensing system is unconstitutional.

Currently, Medical Marijuana Treatment Centers (“MMTCs”) are licensed by the Florida Department of Health Office of Medical Marijuana Use (“OMMU”) and are the only businesses in Florida authorized to cultivate, process and dispense low-THC cannabis and medical marijuana. MMTCs as license holders are required to grow their own crops, process them, and sell them. This “vertical integration” was deemed unconstitutional under the much broader constitutional amendment legalizing medical marijuana passed by Florida voters in 2016. The case has been appealed to the state Supreme Court.

If you would like more information on any aspect of the Florida medical marijuana or cannabis industries, please contact any of the listed attorneys.

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