

Ohio's a Buzz: Impact of Legalization of Recreational Marijuana Use on Employers

By Aretta K. Bernard & Stephanie Olivera Mittica

Yesterday, Ohio voters overwhelmingly passed Issue 2, legalizing recreational marijuana use. Today employers are wondering, "how does this new law affect the workplace?" The short answer is: not much.

Consistent with current Ohio law regarding medical marijuana, the ballot initiative creates Chapter 3780 of the Ohio Revised Code which explicitly provides the following language:

Section 3780.35. Rights of employer.

(A) Nothing in this chapter does any of the following:

- (1) Requires an employer to permit or accommodate an employee's use, possession, or distribution of adult use cannabis otherwise in compliance with this chapter;
- (2) Prohibits an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against an individual with respect to hire, tenure, terms, conditions, or privileges of employment because of that individual's use, possession, or distribution of cannabis otherwise in compliance with this chapter;
- (3) Prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero tolerance drug policy;
- (4) Interferes with any federal restrictions on employment, including the regulations adopted by the United States Department of Transportation in Title 49 of the Code of Federal Regulations, as amended;
- (5) Permits an individual to commence a cause of action against an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking

an adverse employment action against an individual with respect to hire, tenure, terms, conditions, or privileges of employment related to the individual's use of cannabis; or

(6) Affects the authority of the administrator of workers' compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program established in accordance with rules adopted by the administrator under Chapter 4123 of the Revised Code.

(B) An individual who is discharged from employment because of that individual's use of cannabis shall be considered to have been discharged for just cause for purposes of division (D) of section 4141.29 of the Revised Code if the individual's use of cannabis was in violation of an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of cannabis.

To be clear, an employer can still drug test for marijuana and can still prohibit the use of marijuana while working.

Note, even though Issue 2 passed, legalization of recreational marijuana in Ohio is not guaranteed. Issue 2 was a citizen-initiated measure, which according to state law allows the legislature to modify the language. It is unlikely, though possible, that the legislature would make any revisions to the Section addressing employer rights.

At this time, we encourage employers to review their policies to ensure that the organization's position regarding marijuana, both medical and recreational, is clearly stated. If you have any questions, please feel free to contact any of our employment attorneys.

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