

Labor and Employment Alert: New Jersey Legalizes Adult-Use Cannabis: What to Expect in Your Workplace

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Adult use of cannabis is now legal in New Jersey, having been approved by voter referendum in November 2020 and signed into law on February 22, 2021. Previously, the legal use of cannabis in the state was limited to medical card holders.

The greater prevalence of cannabis will undoubtedly create legal, employee, and union relation issues in the workplace. Employers must adopt policies in sync with changing societal norms and the particular complexities of the implemented legislation.

While the new law does not sanction the use or possession of cannabis in the workplace, it dramatically changes how an employer can detect use. Indeed, the new testing protocols will likely result in employers dropping testing for cannabis unless required by federal regulation or contract.

This alert briefly highlights the legal changes effected by the new law and invites the reader to the firm's webinar on Thursday, April 8, 2021 at 1:00 p.m. to learn more and to have your questions answered. [Click here to register.](#)

Permitted Workplace Rules

Under the new law an employer may still:

- Maintain "a drug- and alcohol-free workplace;"
- Prohibit "the possession, transfer, display, transportation, sale and growth" of cannabis "in the workplace;" and
- Promulgate a policy that employees shall not use cannabis or be intoxicated "during work hours."

Cannabis Detection

Notwithstanding being permitted to have in place any of the above policies, an employer may not discipline an employee "solely due to the presence of cannabinoid metabolites in the employee's bodily fluid" and may not enforce a no-use policy by testing an employee unless:

The employer uses "scientifically reliable objective testing methods and procedures, such as testing of blood, urine, or saliva," and

The employer conducts "a physical evaluation in order to determine an employee's state of impairment" and such evaluation is conducted by an individual that has been certified by the state as having the qualifications to opine on the employee's state of impairment, or lack thereof, related to the usage of a cannabis item.

It is not expected that the state will be providing such certifications for many months.

If a test is properly performed, an employer may use the test results "when determining the appropriate employment action concerning the employee, including, but not limited to dismissal, suspension, demotion, or other disciplinary action, except if the employee "is a registered qualifying patient" – meaning the individual has a medical marijuana card – a post-positive test result protocol must be followed. The employer must first "offer the employee or job applicant an opportunity to present a legitimate medical explanation for the positive test result, and shall provide written notice of the right to explain to the employee or job

applicant.” Then the employer must wait three working days before taking any action to see if the employee or job applicant presents any explanation or requests a confirmatory retest of the original sample at the employee’s or job applicant’s own expense. Among other things, the individual “may present an authorization for medical cannabis issued by a health care practitioner, proof of registration with the commission, or both.”

Federally Regulated Employers and Federal Contractors

Employers who must test for cannabis under federal law, such as motor carriers subject to required US DOT testing, may continue to conduct such testing, though state law may be relevant in determining what discipline may be meted out.

Federal contractors that sustain a “provable adverse impact” – for example, losing a contract – may “revise” their “employee prohibitions consistent with federal law, rules, and regulations.” Another section of the law provides that it shall not “prohibit a party to a federal contract or a person applying to be a party to a federal contract from prohibiting the manufacture, transport, distribution, delivery, possession, or use of cannabis items to the extent necessary to comply with the terms and conditions of the contract or to satisfy federal requirements for the contract.”

Next Steps

While the new law is effective immediately, there are many things the state still has to do. It has to promulgate regulations to provide greater clarity and it has to, “in consultation with the Police Training Commission,” establish the standards for issuing the impairment detection certification referenced above. Given the lag in time, employers must carefully make decisions about compliance now and compliance after regulations are issued.

If we can provide guidance or answer any questions about this alert, please reach out to:

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