

Michigan voters say yes to recreational marijuana



Miriam L. Rosen | Wednesday, November 7, 2018

On Tuesday, Michigan voters had their say. One thing that they said loud and clear was “YES” to legalizing recreational marijuana.

As the saying goes, “elections have consequences.” For Michigan employers, a consequence of the new law will be how recreational marijuana affects the workplace. This means Michigan employers must understand the provisions of the law and must make decisions about workplace policies.

The terms of Michigan's new recreational marijuana law

Approved through a public referendum, the new law, officially named the Michigan Regulation and Taxation of Marijuana Act, makes Michigan the first Midwestern state to approve recreational use of marijuana. The act amends existing Michigan law to allow the following:

- Personal possession and use of marijuana by people 21 and older.
- The lawful cultivation and sale of marijuana and industrial hemp by people 21 and older.
- Taxation of revenue from commercial marijuana facilities.
- Creation of administrative rules and establish penalties for violations.

Significantly for employers, the act also includes a very clear statement on legal recreational marijuana and the workplace.

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“This act **does not** require an employer to permit or accommodate conduct otherwise allowed by this act in any workplace or on the employer’s property. This act **does not** prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while under the influence of marijuana. This act **does not** prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person’s violation of a workplace drug policy or because the person was working while under the influence of marijuana.”
(Emphasis added)

To summarize, employers can refuse to hire job applicants and discipline or fire existing employees if they test positive for marijuana in violation of a workplace drug policy or are under the influence while working. This is consistent with the Michigan Medical Marijuana Act that voters approved in 2008.

The new law will go into effect 10 days after the election results are certified – making it effective in mid-December 2018. This gives Michigan employers some time to think about – and plan for – the consequences of legal recreational marijuana.

Takeaways for Employers

Here are some takeaways for employers to consider:

- Employers can implement and enforce workplace drug policies that prohibit employees from being under the influence of marijuana at work and can refuse to hire applicants and discipline/terminate employees who test positive for marijuana.
- The act specifically refers to conduct that is “in violation of a workplace drug policy.” So employers, now is a (really) good time to pull out that policy and make sure that it is up-to-date.
- Employers should state clearly and directly how recreational - and medical - marijuana will be handled under their workplace drug policy.
- Employers do have choices here. Employers can, but are not required to, drug test employees and discipline/terminate for a positive test for marijuana.
- Data from other states where recreational marijuana is legal indicates that some employers are modifying drug screening practices to exclude marijuana from pre-employment testing. Those employers say that they are just responding to the particular realities of finding workers.
- Of course, decisions about testing and other workplace restrictions should be thoughtfully considered and based on the specifics of each workplace.
- Educate employees on the company workplace drug policy. Since employees may not have parsed the finer points of the new law, they may assume that since recreational marijuana is legal, they can’t be fired for a positive test. It would be unfortunate to see someone’s job “go up smoke” over a

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misunderstanding.

For employers with federal government contracts, marijuana is remains an illegal substance under federal law and compliance with applicable federal regulations is required.

The new recreational marijuana law gives employers broad ability to limit the impact of recreational marijuana use on the workplace. However, it does not require it. Just like the voters of Michigan, employers have a choice to make.



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