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Alabama Legalizes Medical Cannabis

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On May 17, 2021, Alabama became the 37th state to “legalize” medical cannabis with the passage of the “Darren Wesley ‘Ato’ Hall Compassion Act.” Cannabis/marijuana use and possession currently remains illegal under federal law. The Act establishes the Alabama Medical Cannabis Commission, which will oversee the regulation of medical cannabis from cultivation to sale at twelve licensed dispensaries in the state.

Permissible Uses

A physician can recommend medical cannabis for patients after certifying that traditional therapies have not improved the patient’s condition. Presently, these conditions are limited to autism spectrum disorder; cancer-related weight loss, nausea, vomiting and pain; Crohn’s Disease; depression; epilepsy or a condition causing seizures; HIV/AIDS-related weight loss or nausea; panic disorder; Parkinson’s Disease; persistent nausea (except if related to pregnancy or excessive cannabis use); post-traumatic stress disorder; sickle-cell anemia; spasticity associated with diseases like ALS and multiple sclerosis; terminal illnesses; Tourette’s Syndrome; and chronic or intractable pain.

The law prohibits smoking, vaping, or consuming medical cannabis in baked products. Medical cannabis may be consumed as tablets, capsules, gummies, lozenges, topical oils, suppositories, transdermal patches, and in nebulizers or as vaporized oil. Individuals may not possess medical cannabis in a vehicle unless the medical cannabis is in its original package and is sealed and reasonably inaccessible while the vehicle is moving.

Employer Protections

The Act states that “[i]t is important to balance the needs of employers to have a strong functioning workforce with the needs of employees who will genuinely benefit from using cannabis for a medical use in a manner that makes the employee a productive employee.” To that end, while the Act permits patients to obtain and use medical cannabis for qualifying conditions, the Act contains extensive protections for employers. The law does not:

- Require any employer to permit, accommodate, or allow the use of medical cannabis, or to modify any job or working conditions of any employee who engages in the use of medical cannabis or for any reason seeks to engage in the use of medical cannabis.
- Prohibit any employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against an individual as a result, in whole or in part, of that individual's use of medical cannabis, regardless of the individual's impairment or lack of impairment resulting from the use of medical cannabis.
- Prohibit or limit the ability of any employer from establishing or enforcing a drug testing policy, prohibiting the use of medical cannabis in the workplace, or implementing a drug-free workforce program.
- Prohibit or limit any employer from adopting an employment policy requiring its employees to notify the employer if an employee possesses a medical cannabis card.
- Interfere with, impair, or impede, any federal restrictions on employment.
- Require a government medical assistance program, employer, or insurer to reimburse an individual for costs associated with the use of medical cannabis.
- Affect or alter the workers' compensation premium discount for drug-free workplaces or the right to deny the payment of workers' compensation benefits to an employee on the basis of a positive drug test or refusal to submit to or cooperate with a drug test.

In addition, individuals are prohibited from undertaking any task under the influence of cannabis, when doing so would constitute negligence, professional malpractice, or professional misconduct, or violation of law.

An employee who is discharged because of his or her use of medical cannabis, or refusal to submit to or cooperate with a drug test, is conclusively presumed to have been discharged for misconduct for purposes of Alabama's Unemployment Compensation Law. Finally, an individual is not permitted to commence any legal action against an employer for refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against an individual due to the individual's use of medical cannabis.

Conclusion

While medical cannabis is now legal in Alabama, it is unclear when it will actually become available. The Alabama Medical Cannabis Commission will be appointed this summer, which will then develop procedures for training physicians and for the production and distribution of medical cannabis. It is currently estimated that registered patients could begin receiving medical cannabis in the fall of 2022.

Finally, the Alabama Legislature made clear that its legalization of medical cannabis is not a prelude to the legalization of recreational/adult use cannabis. On the contrary, the Act specifically states, "It is not the intent of this chapter to provide for or enable recreational use of marijuana in the State of Alabama" and the Legislature's intent is "to avoid a shift from medical cannabis usage to recreational marijuana usage."

Contact your Vorys lawyer if you have questions about medical or recreational cannabis use in jurisdictions in which you operate.