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Labor and Employment Alert: Medical Marijuana Users are Eligible for Unemployment Compensation in Michigan

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The Michigan Medical Marijuana Act (MMMA) grants qualified medical marijuana users who are using marijuana in accordance with the MMMA immunity from “arrest, prosecution, or penalty in any manner.” Such users may not be denied any right including being subject to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau. Several years ago, in *Braska v. Challenge Manufacturing*, the Michigan Court of Appeals held that medical marijuana use will not disqualify a person from receiving unemployment benefits if that person tests positive for marijuana while holding a valid registry identification card issued under the MMMA.

In *Braska*, several employees had tested positive for marijuana and were terminated. The Court explained that, because the employees were registered users of medical marijuana and there was no evidence that the positive drug tests had been caused by anything other than their lawful use of medical marijuana, the employees were not disqualified from receiving unemployment benefits. Holding otherwise and denying unemployment benefits, the Court said, would constitute an improper penalty under the MMMA. So absent evidence that the employees had ingested marijuana in the workplace or had worked under the influence of marijuana, they qualified for unemployment benefits.

The Michigan Unemployment Insurance Agency has since issued guidance on its website explaining the three scenarios in which an employee who uses medical marijuana will be disqualified from receiving unemployment benefits. The employee will be disqualified if: (1) a positive drug test for marijuana was caused by the ingestion of marijuana at the workplace; (2) discharge is based on the fact that the employee was under the influence of marijuana at the workplace; or (3) the employee is unable to demonstrate that he or she is a qualifying patient who has been issued and possesses a registry identification card under the MMMA. When the use of medical marijuana is asserted to avoid a disqualification, the Agency will request a copy of the employee's valid registry identification card.

The term “under the influence” is not defined in the MMMA. Consequently, the Agency explained that “fact finding will seek material facts which demonstrate that an individual’s use of medical marijuana put the safety of persons or property at risk.”

The Agency stated that it will continue to provide all parties protest and appeal rights of its (re) determinations where any party disagreeing with the Agency’s (re)determination may protest or appeal the decision as warranted.

Recreational marijuana is now legal in Michigan as a result of Proposal 1’s passage in November 2018. However, Proposal 1 does not provide the same protections for recreational users as the MMMA provides for medical marijuana users. Proposal 1 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. Nor does Proposal 1 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 that person was working while under the influence of marijuana. Given this, it is unlikely that an employee who tests positive for recreational marijuana user will qualify for unemployment compensation benefits. Contact your Vorys lawyer if you have questions about the medical or recreational marijuana in the workplace.