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Labor and Employment Alert: Ohio's New Medical Marijuana Law Preserves Employers' Rights

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On June 8, 2016, Governor John Kasich signed [House Bill 523](#) to legalize the use of medical marijuana in Ohio. Ohio now joins the 25 states and District of Columbia that have “legalized” marijuana for medicinal purposes (marijuana use, possession, and distribution remains illegal under federal law).

House Bill 523 establishes a comprehensive, state-wide system to regulate the use, cultivation and distribution of medical marijuana. To that end, the law creates the Medical Marijuana Control Program within the Department of Commerce and the State Board of Pharmacy through which the department will oversee licensing medical marijuana cultivators, processors, and laboratories that test medical marijuana, while the Pharmacy Board will license retail dispensaries and the registration of patients and their caregivers. The use of medical marijuana will be permitted if recommended by a physician for the treatment of certain qualifying medical conditions and is permitted only in the form of oils, tinctures, plant material, edibles and patches. Smoking of medical marijuana is expressly prohibited.

As we reported [previously](#), the law contains important provisions for employers allowing them to continue to manage their workplaces and employees. Under the new law, an employer is **not** required to permit or accommodate an employee's use, possession, or distribution of medical marijuana. And an employer is not prohibited 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 use, possession, or distribution of medical marijuana. Notably, the law does not permit a person to sue an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against him or her with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana.

An employer may still establish and enforce a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy. The administrator of Workers' Compensation may continue to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program under the auspices of the Bureau of Workers' Compensation. Along similar lines, the law maintains the rebuttable presumption that an employee is ineligible for workers' compensation if the employee was under the influence of marijuana and being under the influence of marijuana was the proximate cause of the injury, regardless of whether the marijuana use is recommended by a physician.

The new law further specifies that a person who is terminated because he or she used medical marijuana is considered to have been discharged for "just cause" under the Unemployment Compensation Law if that use violated an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of medical marijuana. This means the person will be ineligible to serve a waiting week or receive unemployment benefits for the duration of the person's unemployment.

Finally, nothing in the new law interferes with any federal restrictions on employment, including U.S. Department of Transportation regulations. Nor does it permit the use, possession, or administration of medical marijuana on federal land located in Ohio.

Ohio enacted House Bill 523 in the face of efforts to amend the Ohio Constitution to permit the use of medical marijuana. For now, the backers of the initiative drive have ended their campaign to place the issue on the November 2016 ballot. This leaves the implementation of medical marijuana to the Ohio General Assembly and the administrative agencies.

Contact your Vorys lawyer if you have questions about how legalized marijuana may affect your business in Ohio.