

Publications

Labor and Employment Alert: West Virginia Becomes the 29th State to Permit Medical Marijuana

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Update: West Virginia Changes Drug Testing Policies

Since this *Labor and Employment Alert* was published there has been a development. On May 12, 2017, West Virginia revised the Safer Work Place Act, changing the drug testing rules for the state. To learn more read this *Labor and Employment Alert*.

Original Alert:

On April 19, 2017, West Virginia Governor Jim Justice signed Senate Bill 386 allowing the use of medical marijuana in the state. The law creates a medical cannabis commission that will adopt the necessary regulations for the state's Bureau of Public Health to issue marijuana patient identification cards beginning on July 1, 2019. The bureau also will inspect medical marijuana business, process applications, and issue business licenses to a limited number of growers and dispensaries.

Under the new law, registered patients who have one of 16 specified conditions may use medical marijuana after securing a "certification" from their physician. In order to recommend medical marijuana, a physician must be approved by the Bureau of Public Health. Currently, the acceptable conditions for medical marijuana use are: cancer, HIV/AIDS, amyotrophic lateral sclerosis, Parkinson's disease, multiple sclerosis, spinal cord injuries, epilepsy, neuropathies, Huntington's disease, Crohn's disease, post-traumatic stress disorder, intractable seizures, sickle cell anemia, severe chronic or intractable pain and being terminally ill.

Patients are not allowed to smoke marijuana or grow marijuana at home. Instead, patients will be able to obtain marijuana from state-licensed dispensaries in the form of pills, oils, topical ointments, tinctures, dermal patches and other forms for use in a vaporizer or nebulizer. While the law prohibits the sale of marijuana-infused edibles, a patient may incorporate marijuana into an edible form on his or her own.

With respect to employment, the law prohibits employers from discharging, threatening, refusing to hire or otherwise discriminating or retaliating against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana. The Department of Education is required to promulgate rules regarding the possession and use of medical cannabis by students and employees on the grounds of preschools, primary schools, secondary schools and licensed child-care and social service centers.

At the same time, the law preserves employers' right to control their workplaces:

- Employers are not required to make any accommodation of the use of medical marijuana on the property or premises of any place of employment.
- The law does not limit the ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position.
- The law does not require an employer to commit any act that would put the employer or any person acting on its behalf in violation of federal law.
- An employer may prohibit a patient from performing any task which the employer deems life-threatening, to either the employee or another employee, while under the influence of medical marijuana. This prohibition is not an adverse employment decision even if it results in financial harm.
- A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk while under the influence of medical marijuana. This prohibition is not an adverse employment decision even if it results in financial harm.
- A person is not permitted to engage in any task under the influence of medical marijuana when doing so would constitute negligence, professional malpractice, or professional misconduct.
- A patient also may not perform any employment duties at heights or in confined spaces, including mining, while under the influence of medical marijuana.

Additionally, a patient may not operate or be in physical control while under the influence with a blood content of more than three nanograms of active tetrahydrocannabinol per milliliter of blood serum of: chemicals which require a federal or state permit; high-voltage electricity or any other public utility; or any vehicle, aircraft, train, boat or heavy machinery.

Patients will not be able to obtain ID cards until July 1, 2019, at the earliest. Contact your Vorys lawyer if you have questions about West Virginia's new medical marijuana law or about the medical and recreational marijuana laws in other states and their impact on your business.