
Michigan's Legalization of Marijuana Need Not Change School District Policies

By Mark W. McInerney / Dec 06, 2018

On November 6, 2018, Michigan voters passed Proposal 1, which legalizes the possession, use, and cultivation of marijuana and certain products containing marijuana by persons 21 years or older. The new law became effective on December 6, 2018.

While possession and use of marijuana is now legal in Michigan, the new law did not affect an employer's right to maintain and enforce drug policies, including those addressing marijuana. Specifically, the new law:

- Does not require an employer to permit or accommodate marijuana (including medical marijuana) in the workplace;
- Does not permit an employee to report to work while under the influence of, or while impaired by, marijuana;
- Does not prohibit an employer from disciplining or terminating an employee who possesses or uses marijuana at work in violation of an employer's policies;
- Does not prohibit an employer from disciplining or terminating an employee who tests positive for marijuana in violation of an employer's policies; and
- Does not change federal regulations, such as Department of Transportation regulations for commercial driver's license holders.

In the face of legalization, school districts, like other Michigan employers, should take two key steps.

First, districts should review their policies to ensure that they clearly prohibit the use or possession of marijuana on school property or at school events. Some policies currently prohibit the use or possession of alcohol, illegal drugs, or the abuse of prescriptions drugs. Since marijuana, while legal in Michigan, is still illegal under federal law, it may not be clear if the term "illegal drugs" includes marijuana. To avoid confusion, policies might be amended to specifically identify marijuana as a substance that may not be used or possessed at school.

Second, many district employees may think that because marijuana is now legal in Michigan, they now have the right to possess or even use marijuana at school. Districts should clarify in plain terms that the change in Michigan law did not change district policies and that the district continues to forbid the possession or use of marijuana at school, as well as being under the influence of or impaired by marijuana at school.

The fact that marijuana is legal only for persons over age 21 should mean that revisions to student codes of conduct are not necessary as a result of the new law.

If you have questions about the impact of marijuana legalization on school districts, please contact Mark McInerney at (313) 965-8383 | mmcinerney@clarkhill.com, or another member of Clark Hill's school law team.