
Recreational Marijuana is About To Be Legal in Michigan: What Employers Need to Know

By Ellen E. Hoepfner / Dec 05, 2018

Effective December 6, 2018, it will be legal in Michigan for persons 21 years of age or older to use and possess marijuana and marijuana products. While the law does not impact an employer's right to maintain and enforce existing drug policies, employers should review their policies to ensure they appropriately describe the employer's expectations and practices regarding drug use, possession, and testing. Employers should also consider reminding employees of their drug policies, explaining that those policies are unaffected by the new law, and outlining the consequences of violating those policies.

On November 6, 2018, voters in Michigan passed Proposal 1, which legalizes possession, use and cultivation of marijuana and certain marijuana products by persons 21 years or older. The law does not change an employer's right to maintain a drug-free workplace or conduct drug testing. Specifically, the law:

- Does not require an employer to permit or accommodate 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 tests positive for marijuana in violation of an employer's policy;
- Does not prohibit an employer from disciplining or terminating an employee who consumes marijuana at work in violation of an employer's policy;
- Does not change federal regulations, such as DOT regulations for commercial driver's license holders.

While employers continue to have the right to maintain and enforce their existing drug policies, not all employees may be aware of that right. To prevent confusion, employers should review their existing drug policies in light of the new law and make any clarifying changes. For example, if a policy refers to "illegal drugs," an employer may consider eliminating the reference to "illegal." This is because although marijuana remains illegal under federal law, many employees may not make this distinction.

Employers should also consider re-publishing their existing (or revised) drug policies to employees, along with a memorandum explaining that the policies are not changed by legalization of recreational marijuana in Michigan and specifying the potential consequences for violation of those policies.

If you have questions about the impact of recreational marijuana on employers, please contact a member of our experienced Labor and Employment team.