

Employment Law Update *August 2018*

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We represent clients ranging from large corporations to small enterprises and individuals. We have the resources to assemble a coordinated team of lawyers and support staff to meet the specific needs of each client.

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This alert is being distributed and published as a service to our clients. It should be viewed as a succinct summary of the law and not as a substitute for legal consultation. Please contact legal counsel to discuss your specific situation and any information found in this alert.

As many of you are aware, Ohio's medical marijuana law is supposed to go into effect no later than September 8, 2018. However, due to various delays that have culminated in the State's inability to issue certificates of operation to growers in a timely manner, it does not appear that the program will be "fully operational" by that date. And yet, as the inevitable full implementation of the law draws near, it is important for employers to understand what effect the law will have on the workplace.

The actual potential impact that the law will have on employers is relatively limited. For example, the law DOES NOT:

- Require an employer to accommodate an employee's use of medical marijuana.
- Prohibit an employer from discharging, refusing to hire, or taking an adverse employment action against an employee due to his or her use of medical marijuana.
- Prohibit an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy.
- Permit an employee to sue an employer for taking an adverse employment action related to medical marijuana.
- Interfere with federal restrictions on employees, such as requirements for a drug free workplace in accordance with U.S. Department of Transportation regulations.

The law DOES:

- Consider a person who is discharged from employment because of the person's medical marijuana use to have been discharged for just cause for purposes of unemployment compensation if the use violated an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating medical marijuana use.
- Maintain the "rebuttable presumption" that an employee is ineligible for workers' compensation if the employee was under the influence of marijuana and such influence was the proximate cause of the injury, regardless of whether the marijuana use is recommended by a physician.

Moreover, the medical marijuana law specifically provides that it will have no effect on the Ohio Bureau of Workers' Compensation's Drug-Free Workplace Program and that it will not require medical marijuana be a covered drug for purposes of workers' compensation claims in Ohio.

Notwithstanding the fact that employers need not accommodate an employee's use of medical marijuana, employers should be mindful of the fact that because medical marijuana can only be used as treatment for 21 specific conditions in Ohio, it is likely that an employee who is being treated with medical marijuana has a medical impairment that would qualify as a disability under the Americans with Disabilities Act. Thus, an employer that becomes aware of an employee who is being treated with medical marijuana may have an obligation under the ADA to engage in dialogue with the employee regarding the possible need for a reasonable accommodation if the employee is struggling with his or her job duties.

Employers should also exercise caution when allowing employees known to be treating with medical marijuana to operate heavy equipment or machinery, as doing so could be construed to be a violation of OSHA's general duty clause, which requires employers to maintain a safe environment within which to work.

In light of the inevitable implementation of Ohio's medical marijuana law, employers should consider how they intend to deal with employees who may be treated with medical marijuana and be sure that their policies are updated and revised accordingly. Please feel free to contact me with any questions regarding your substance abuse policies.

If you have any questions or would like to discuss the above issues in more detail, please do not hesitate to contact Bryan Niemeyer, Certified Labor and Employment Law Specialist, Faulkner, Garmhausen, Keister & Shenk, A Legal Professional Association, at 937-492-1271 or bniemeyer@fgks-law.com.