

FOCUS

Taft Stettinius & Hollister LLP

MEDICAL MARIJUANA: WHAT'S LEGAL IN OHIO'S WORKPLACE?

Janica Pierce Tucker and Devin Spencer

Marijuana is becoming increasingly popular as a treatment option for a variety of health conditions. Laws about medical marijuana in the workplace are also evolving, and can seem unclear to employers and employees. While marijuana remains illegal at the federal level under the federal Controlled Substances Act, at least 29 states have legalized medical marijuana to some extent—including Ohio.

As an employer-friendly state, Ohio has implemented multiple state laws surrounding medical marijuana in the workplace. Here are five key considerations for employers in Ohio about medical marijuana:

Review current federal and state laws. Marijuana has been categorized as an illegal substance under the Controlled Substances Act for nearly 50 years, but states are now assessing marijuana at the state level. Although Ohio passed its medical marijuana law in 2016, Ohio employers are protected against obligations to permit or accommodate an employee's use,

possession or distribution of medical marijuana. This includes Cannabidiol (CBD), as the Ohio Board of Pharmacy has determined that CBD falls under the definition of marijuana. Hemp and hemp-derived products are not illegal under the federal 2018 Farm Bill.

Evaluate your drug policy.

Ohio is one of eight states that allows employers to implement drug-free workplace policies. In Ohio, employers can establish and enforce drug-free workplace, zero-tolerance and drug testing policies. Regardless of the type of policy you choose, be sure

that your drug policy is up-to-date and readily available to all employees.

Invest in management trainings.

Implementing a drug policy consistently for all employees is essential. Managers should be aware and fully trained on these policies in order to abide by the law in hiring practices, drug testing and terminations. Seek legal professionals to lead trainings for your human resources team, in-house counsel, managers and decision-makers to equip them with the knowledge and resources they need to comply with state and federal law.

Assess big picture implications.

If you are an Ohio-based employer but have employees in states where medical marijuana is illegal, employees typically must comply with their state laws, regardless of your internal policy. Employees who are subject to Department of Transportation (DOT) drug testing—such as public safety professionals—are not permitted to use marijuana regardless of employer policies or state laws authorizing its use.

Stay informed. Administration changes at the local and federal levels can im-

pact existing medical marijuana laws. In 2009 under the Obama administration, the Department of Justice (DOJ) released a memorandum discouraging the use of federal resources to investigate and prosecute marijuana offenders if their actions were in unwavering compliance with existing medical marijuana state law. In 2017 under the Trump administration, an issued memorandum stated that task force subcommittees may review policies related to marijuana to support the DOJ's efforts to reduce violent crime and achieve Trump administration goals. This difference in priorities among administrations indicates that laws and policies may continue to change in the future.

Laws surrounding marijuana use will continue to evolve as public opinion, research, workplace culture and administration priorities change. Taft's Employment and Labor Relations attorneys can help you navigate the complexities of workplace law. To schedule trainings for your employees or for legal questions specific to your workplace, contact members of our Columbus-based team at jpierce@taftlaw.com or dspencer@taftlaw.com.

