

PUFF, PUFF, PASSED: 6 THINGS MISSISSIPPI EMPLOYERS NEED TO KNOW AS STATE PASSES MEDICAL CANNABIS ACT

Insights
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Mississippi just became the 37th state to legalize medical marijuana when Governor Tate Reeves (somewhat begrudgingly) signed a bill into law on February 2 to decriminalize the use of marijuana/cannabis for medical purposes. The Mississippi Medical Cannabis Act (MMCA) – which went into effect immediately upon signing – allows for the use of marijuana as a medically authorized treatment for over two dozen “debilitating medical” conditions, most of which would be considered a disability under federal law. While the MMCA is 445 pages, we’ve reviewed the whole law so you don’t have to – and picked out the six most important things Mississippi employers need to know about this latest workplace development.

How Will the MMCA Impact Applicants, Employees, and the Workplace in General?

Employees may believe that the MMCA protects them from an adverse job action if they are approved to use cannabis to alleviate a medical condition that is listed within the MMCA. And there will be no shortage of products that your workers will be able to avail themselves of, as the law states that medical cannabis products can include cannabis flower, cannabis extracts, edible cannabis products, beverages, topical products, ointments, oils, tinctures and suppositories.

While Mississippi has only a few employment laws, the federal employment law with the most applicability is the Americans with Disabilities Act (ADA). The debilitating medical conditions listed in the MMCA will in all likelihood

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qualify as a “disability” under the ADA. And, as you should know, the ADA protects individuals with disabilities from discrimination and requires that an employer reasonably accommodate an applicant’s or employee’s disability if doing so does not create an undue hardship.

Mississippi employers can exhale a sigh of relief. The MMCA goes to some length to protect employers, providing these six key considerations:

1. Employers are not required to permit, accommodate, or allow the use of medical cannabis, or to modify any job or working conditions for any employee who engages in the medical use of cannabis.
2. Employers may refuse to hire an applicant and can take an adverse employment action against an employee, up to and including termination, “as a result, in whole or in part, of that individual’s medical use of medical cannabis,” regardless of the individual’s impairment or lack of impairment resulting from the medical use of cannabis.
3. Employers may discipline “an employee for ingesting medical cannabis in the workplace or for working while under the influence of medical cannabis.”
4. Employers may establish or continue to enforce a drug testing policy.
5. The MMCA does not create a private right of action by an employee against an employer nor does it “affect the existing legal relationship between an employer and employee or any existing law or regulation relating to such relationship.”
6. Employers and their workers’ compensation carriers or other insurance carriers are not required to pay for or to reimburse an individual for the costs associated with the medical use of cannabis.

What Does This Mean For You?

The good news for Mississippi employers is that it is business as usual for the most part, at least with respect to applicants and employees. If you want to do so, and under the right circumstances, you can have some tolerance towards employees who are receiving authorized treatment via medical cannabis while off duty. That decision depends

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on the nature of your business and the particular position occupied by the employee.

For example, we recommend that you should never implement a policy that allows an employee to use medical cannabis, even off duty, if the employee is in a safety sensitive position while on duty. And, of course, you should never implement a policy that allows for the use of medical cannabis while the employee is working, and you should act swiftly if you detect that an employee is working under the influence. If you want to modify your existing drug policy, we recommend that you do so under guidance of counsel and to make sure that it is in compliance with your workers' compensation policy.

With respect to customers who come on your premises and engage in the use of medical marijuana, you can prevent that as well. In fact, the MMCA states that a civil or criminal penalty may be imposed on an individual who is "smoking medical cannabis in a public place or in a motor vehicle" and smoking includes "vaping and any other method of inhalation of medical cannabis."

Conclusion

At least 18 states have decriminalized marijuana for recreational purposes. We anticipate that within a few years, the federal government will decriminalize all uses of marijuana. The complete decriminalization of marijuana by the federal government, should that occur, will be a game-changer with respect to how an employer can regulate the workplace. Until that time comes, however, Mississippi employers can remain high on the comfort of knowing that the MMCA does not create new obligations in Mississippi for managing employees and for the enforcement of an employer's anti-drug policy.

We'll monitor developments related to this law and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any member of [our Gulfport office](#).