

# FLORIDA VOTERS COULD LEGALIZE RECREATIONAL CANNABIS THIS FALL: HERE'S WHAT EMPLOYERS NEED TO KNOW

Insights  
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Businesses in the Sunshine State should start thinking about how a ballot initiative to legalize recreational cannabis could impact their workplace policies and practices. The Florida Supreme Court recently approved the ballot initiative, which will require 60% of the votes this November in order to take effect. While we anticipate that employers would still be able to enforce drug-free workplace policies if voters approve the initiative, you should stay tuned to developments as they unfold and review your policies to ensure they are up to date and compliant. Here are the key things Florida employers need to know ahead of Election Day.

## How Did We Get Here?

Florida lawmakers have been gradually easing restrictions on medical cannabis and expanding the list of qualifying conditions under the state's medical marijuana laws since the Compassionate Medical Cannabis Act (also known as "Charlotte's Web" bill) was signed into law in 2014.

- By 2016, voters approved a comprehensive medical cannabis program, and the list of qualifying medical conditions was expanded to include cancer, epilepsy, glaucoma, HIV/AIDS, post-traumatic stress disorder (PTSD), amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, and multiple sclerosis.
- Ultimately, the state legislature passed a statute allowing Florida residents who are at least 18 years old and suffer from qualifying medical conditions to obtain a Medical Marijuana Use Registry Identification card. However, the

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statute did not require employers to accommodate employees seeking to consume medical marijuana either during work or outside of work.

- Recently, the Florida Supreme Court ruled in favor of a proposed amendment to the State Constitution (Amendment 3), which would allow “adults 21 years or older to possess, purchase, or use marijuana products and marijuana accessories for non-medical personal consumption.” If passed by Florida voters, Amendment 3 would only permit Medical Marijuana Treatment Centers (MMTCs) to legally sell cannabis. Adults would not be allowed to grow their own.

### How Does Florida’s Ballot Initiative Fit Into Recent Trends?

Cannabis is currently legal for recreational use in 24 states: Colorado, Washington, Alaska, Oregon, California, Maine, Massachusetts, Nevada, Michigan, Vermont, Illinois, Arizona, Montana, New Jersey, New York, Virginia, New Mexico, Connecticut, Rhode Island, Maryland, Missouri, Delaware, Minnesota, and Ohio. It is also legal in Washington, D.C.

Notably, states that have legalized cannabis for recreational use have implemented age requirements and rules governing possession — and most states have also enacted tax measures. A few examples include:

- **Colorado:** Adults who are at least age 21 can possess and give away up to one ounce of marijuana and grow up to six plants each. Marijuana use in public is legal. Purchases at licensed dispensaries are subject to standard sales tax and an additional 10% marijuana sales tax. Further, a 15% excise tax applies to the wholesale price of marijuana retail purchases.
- **Illinois:** Residents who are at least age 21 may possess 30 grams of marijuana, 5 grams of concentrated cannabis, and products containing up to 500 milligrams of THC. While in state, non-residents can possess half these amounts. Sales are taxed based on THC level: Cannabis with more than 35% TCH is taxed at 25%, whereas cannabis with less THC is taxed at 10%. Local municipalities are permitted to levy up to a 3% sales tax.
- **Ohio** was the most recent state to legalize marijuana for recreational use, with voters approving the corresponding

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ballot measure in November 2023. Ohio's law allows adults aged 21 and older to grow plants in their homes and purchase and possess up to 2.5 ounces of cannabis. A 10% tax is added to purchases at dispensaries.

Florida's initiative would allow adults to possess up to three ounces of cannabis. Unlike Colorado, Ohio, and some other states, Florida adults would not be allowed to grow their own cannabis. Officials from the Florida Legislature and the Governor's Office estimate that Amendment 3, if passed, could generate over \$150 million in new sales tax revenue.

## What Do Florida Employers Need to Know?

Even if the amendment is approved, we expect that employers will be allowed to maintain a drug-free workplace policy and prohibit workers from being under the influence of cannabis at work. Here are some key points to consider:

- **Employer Protections.** The Florida Legislature built in protections for employers when crafting the medical marijuana bill and made clear that employers are not required to accommodate the medical use of marijuana in the workplace — or any employee while under the influence of marijuana — and specifically stated that the marijuana bill does not give workers the right to sue an employer for wrongful discharge or retaliation. Any changes that would allow individuals to use marijuana for recreational purposes along with medical purposes are not expected to change the employer protections currently in place.
- **Drug-Free Workplace Policies.** Even if the recreational marijuana amendment passes in November, employers in Florida should be able to consistently enforce their policies prohibiting cannabis use. Therefore, you should be able to continue to send any employee to random or reasonable-suspicion drug testing consistent with your policies and practices, and then enforce your disciplinary policies as you would no matter what kind of illegal drug — including marijuana (which is still illegal under federal law) — shows up in the worker's system.
- **Safety-Sensitive Positions.** If you employ individuals in safety-sensitive positions or other jobs that require drug testing under federal or state guidelines, you will almost certainly want to follow drug-free workplace and screening recommendations. In some cases, you may be

required to do so under federal law, such as Department of Transportation (DOT) regulations. In other cases, you will want to do so in order to avoid the risk of having one of your employees cause an accident involving members of the public, coworkers, or themselves, which could lead to devastating consequences and employer liability.

## **Conclusion**

Changes in the law inevitably bring growing pains for both employers and employees, and we will continue to monitor developments in this area. Make sure that you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox.

Employers should seek guidance from their employment counsel to make sure their policies and procedures comply with the latest requirements. Additionally, as is discussed above, if you have employees in different states, you should be aware that laws differ and this is a topic that continues to evolve. If you have any questions about this new law, or how it may affect your organization, please contact the authors of this Insight, your Fisher Phillips attorney, or an attorney in one of our [Florida offices](#).