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OHIO EMPLOYERS SHOULD FOLLOW THESE 6 STEPS NOW THAT RECREATIONAL CANNABIS SALES HAVE BEGUN

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Ohio employers need to prepare now that legalized recreational cannabis sales have kicked off – and your workers will be able to legally purchase the drug throughout the state. Beginning August 6, Ohioans 21 years of age or older will be able to purchase and possess up to 2.5 ounces of cannabis. What are the six things Ohio employers need to do now that recreational cannabis sales have begun?

Expanded Availability of Cannabis

Since Ohio authorized the use of medical marijuana back in 2016, you may already have policies in place addressing cannabis use and the workplace. The law provides that an employer has the right to take employment actions to the extent the medicinal cannabis use impacts the workplace. But only certain workers were able to ingest medical marijuana depending on the medical conditions in place.

However, the new law legalizing recreational cannabis changes the landscape for Ohio. It expanded the numbers of employees who may legally use cannabis to **anyone** 21 years of age or older. The end result: an increased chance of your workers having cannabis in their system during work hours, regardless of whether they are under the influence or not.

Protections for Employers

The law provides specific language to protect an employer's right to discipline and discharge employees for cannabis use

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that impacts the workplace. Much like with medical marijuana, Ohio employers retain all of the following rights:

- An employer does not have to permit or accommodate an employee's use, possession, or distribution of adult use cannabis **at the workplace**, even if caused by lawful off-duty use of cannabis;
- The same holds true for **employees impaired by the drug** – employers do not need to tolerate such behavior;
- An employer is permitted to refuse to hire, discharge, discipline, or otherwise take an **adverse employment action** against an individual because of that individual's use, possession, or distribution of cannabis in the workplace;
- An employer is permitted to establish and enforce a **drug testing policy**, drug-free workplace policy, and/or zero-tolerance drug policy; and
- If an employer discharges an employee from employment due to cannabis use in violation of company policy, the employee will be considered to have been **discharged for just cause**.

Your 6-Step Plan

Below is a six-step plan of action for employers to take now that adult-use recreational cannabis sales have begun:

1. Review and Update Drug Testing Protocols. If you have not done so already, reevaluate your desired pre-employment, post-accident and reasonable suspicion testing programs and protocols. Keep in mind that you may have mandatory testing requirements under certain state and/or federal regulations, such as those set by the Department of Transportation. Also, check your agreements with your insurance carriers to determine if cannabis testing is a condition of coverage and/or any discounts. Since testing for cannabis is not a perfect science, discuss with your lab the differences between qualitative and quantitative tests and which best supports enforcement of your workplace policies.

Employers not covered by a mandate have a range of options to consider when it comes to testing, including pre-employment, post-accident, random, and reasonable suspicion testing. Options for testing may include:

- Pre-employment, random, post-accident, and/or reasonable suspicion testing of all employees (regardless of occupation or position) for all panel drugs, including cannabis;
- Stop or discontinue all drug testing;
- Stop or discontinue all pre-employment testing;
- Remove cannabis from all testing panels;
- Remove cannabis from only pre-employment testing panels, but continue to test for cannabis in other tests;
- Test for all drugs but only specific occupations or positions (e.g., safety-sensitive positions).

2. Update Policies. Update employee handbooks, workers' compensation, and other policies so employees have notice that, even though legalized, cannabis is still prohibited in the workplace. The policies should provide clear notice to the employees that possession or use of cannabis at the worksite is prohibited, and that employees are not permitted to use cannabis while on lunch or other breaks. The company policies should make clear the consequences of prohibited workplace use.

3. Consider Last Chance Policies and Substance Abuse Programs. Determine if you want to adopt last chance programs for employees who test positive or provide access to a substance abuse program.

4. Offer Training. Train HR professionals, managers, and supervisors for conversations with employees regarding both medical and personal use of cannabis. Make sure your managers have a clear understanding of the policies relating to cannabis use at the workplace, an understanding of testing protocols, and disciplinary policies.

5. Stay Alert. Train managers on the signs of impairment at work and your organization's policy for addressing working under the influence of cannabis.

6. Communicate. Hold a meeting to update employees on the company's position and expectations relative to cannabis use.

Conclusion

We will continue to monitor for developments 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 about this new law or how it may affect your business, please contact your Fisher Phillips attorney, the authors of the Insight, or any of the attorneys in our [Ohio offices](#).