

Insights, News & Events

# MEDICAL CANNABIS USE IN KENTUCKY WORKPLACES: 3 EMPLOYER TAKEAWAYS + 5 STEPS TO TAKE NOW

Insights  
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After over a year of preparation, Kentucky's Medical Cannabis Program is slated to take effect January 1, 2025. While the new law legalizes medical use, the program's reach is limited. Employees who become registered cardholders may mistakenly expect to use medical cannabis without any job repercussions, but the new law empowers employers to set rules restricting even lawful use by employees. So, now is the time to review the new law and effectively communicate your policies to employees. We'll give you some quick background + three key takeaways and a five-step action plan.

## Quick Background

Kentucky became the 38th state to legalize medical cannabis when Gov. Andy Beshear signed [SB 47](#) into law last year. The law takes effect January 1 and establishes a [Medical Cannabis Program](#) that:

- allows individuals with a qualifying medical condition (such as cancer, chronic pain, or epilepsy) to possess, transport, and use medical cannabis after obtaining a valid registry identification card from the Cabinet for Health and Family Services (CHFS); and
- protects and regulates medical cannabis practitioners and licensed medical cannabis businesses in the Commonwealth, including cultivators, dispensaries, producers, and safety compliance facilities.

## Related People



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For additional background information on SB 47 and who it protects, click [here](#).

## What's the Latest?

Earlier this year, the CHFS issued [several rounds of regulations](#) applicable to cannabis businesses, as well as medical cannabis patients, caregivers, and practitioners. To date, Kentucky has not issued any similar regulations specifically addressing employers and related workplace policies.

## 3 Key Takeaways for Kentucky Employers

### 1. There Are Limitations, Even for Cardholders.

**As an employer, you should be aware of the types of conduct that will remain illegal – especially if your working environment or industry is subject to greater restrictions.**

- **Operating Equipment:** Employers may prohibit employees from using equipment, machinery, or power tools if you believe the employee's medical cannabis use poses an unreasonable safety risk. In fact, the operation of some equipment, such as vehicles, aircraft, or other vessels, while under the influence would not only be a potential violation of employment policies, but the law as well. While the new law legalizes the use of medical cannabis, it does not de-criminalize the operation of a vehicle while under the influence or consumption of it while operating those vehicles.
- **Restrictions on Certain Properties:** Employees that work at any preschool, primary, or secondary school; any correctional facility; or on federal government property will also be legally restricted from the use or possession of medical cannabis while working in these environments.
- **Professional Limitations:** Certain employees licensed under the Kentucky Board of Nursing, the Kentucky Board of Podiatry, or the Kentucky Board of Medical Licensure, may be subject to disciplinary action if there is probable cause to believe that they have become impaired by or abused medical cannabis. They may also be subject to discipline by their licensing board if their use interferes with their professional, social, or economic functions in the community or causes a loss of self-control. The law also does not protect any employee who undertakes a

task when under the influence if doing so would constitute negligence or professional malpractice.

## **2. Employers Can Implement Policies Limiting the Use in the Workplace.**

**Employers are not required to permit or accommodate the use, consumption, possession, transfer, display, transportation, distribution, sale, or growing of medical cannabis in the workplace. Employers may include provisions in their employment contracts prohibiting use by employees. Additionally, they may create or rely upon existing personnel policies prohibiting the use of cannabis – including medical use – by employees.**

## **3. Cardholders Are Not Granted a Protected Legal Status.**

**Medical cannabis users don't have protected legal status under Kentucky or federal law.**

- **SB 47 does not create a new protected class for medical cannabis users** or permit a cause of action against an employer for wrongful discharge or discrimination.
- **Discharged employees will not be eligible for unemployment insurance benefits** if they are discharged for consuming medical cannabis in the workplace, working while under the influence, or testing positive for a controlled substance, if those actions violated their employment contract or your established personnel policies.
- **At the federal level, all cannabis use remains illegal**, and the Americans with Disabilities Act does not require you to permit medical cannabis to be used in your workplace as a reasonable accommodation for an employee's qualifying disability.

## **5-Step Action Plan for Kentucky Employers**

As you prepare for the New Year, you must plan for the impact legalized medical cannabis could have on your workplace. While there might be a lag before Kentucky's cannabis businesses are up and running as we await the first licensing lotteries, you could start fielding questions from employees much sooner – especially since the Patient and Caregiver Registry Portal opens January 1 – so you should consider taking these steps as soon as possible:

- 1. Determine how you will approach employees who are cardholders and medical cannabis use in your workplace.** For example, you will need to decide whether to take a hard line against medical cannabis use or a more nuanced approach (such as permitting lawful use off-the-clock but prohibiting use or impairment while on the job).
- 2. Update your drug use and testing policies (as needed)** to reflect your stance on medical cannabis in the workplace and how you will enforce any new rules or restrictions you choose to implement.
- 3. Notify your employees** of any policy changes.
- 4. Work with counsel to draft employment contract provisions (if applicable)** prohibiting employees from using medical cannabis.
- 5. Stay tuned for updates, especially if the CHFS issues regulations** that further clarify your responsibilities as they relate to employees who are qualified and registered to use medical cannabis.

## **Conclusion**

We will continue to monitor the situation and provide updates as developments occur, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions about how to ensure your drug testing policies comply with workplace and other applicable laws, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in [our Louisville office](#).