# Employers Shielded as Ohio Legalizes Medical Marijuana

Insights
6.09.16

It's official – Ohio is the 26th state to legalize medical marijuana. Governor Kasich has signed House Bill 523, which becomes effective September 6, 2016. At that time, Ohioans can expect that residents with a qualifying medical diagnosis will exercise their right to travel to other states where marijuana is legal to purchase and travel back with it to Ohio for use consistent with the new law.

***How are employers protected?***
House Bill 523 specifically shields employers and preserves drug-free workplaces in the State of Ohio. How? Specific provisions in this new law clearly state employers are ***not*** required to:

- Permit or accommodate an employee's use, possession or distribution of medical marijuana;
- Curtail adverse employment decisions (e.g. hire, discipline, demote, transfer, fire) against a person because of his/her use, possession or distribution of medical marijuana;
- Modify the establishment or implementation of a drug-free workplace or zero-tolerance drug policy; or,
- Alter in any manner compliance policies or actions regarding applicable U.S. Department of Transportation regulations.

In addition, House Bill 523 states that it does not authorize any person to sue an employer for adverse employment action taken related to medical marijuana. So, it remains business as usual for Ohio employers.

***What will happen to unemployment claims by workers discharged for use of medical marijuana?***
House Bill 523 contains a provision that identifies that, for purposes of Ohio's Unemployment Compensation Law, an employer has "just cause" to fire an individual for use of medical marijuana provided the use violated the employer's drug-free or zero-tolerance drug policies.

***How might this new law impact workers' compensation claims?***
House Bill 523 does ***not*** change an employer's right to challenge workers' compensation claims where medical marijuana use results in injury. Under existing Ohio law, intoxication (including marijuana intoxication) is a defense to a claim for workers' compensation benefits. Based on studies that have shown marijuana usage leads to impaired judgment, coordination, or delayed decision-making, it is well-recognized that an employer can utilize a positive post-accident drug screen for

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

marijuana, and medical narrative report from a qualified physician, to establish that marijuana intoxication was the cause of the injury and therefore not compensable.

***Our recommendation for all Ohio employers:***
Prior to September 6, 2016, all employers should:

- Review drug-free and zero-tolerance drug policies to make sure they are updated to specifically address medical marijuana; and,
- Distribute these revised policies to all employees, provide appropriate training, and obtain written acknowledgments to place in personnel files.

---

*This Legal Alert provides an overview of a specific Ohio law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

## *Related People*

**Sarah Moore**
Of Counsel
440.740.2145
Email

## *Service Focus*

Counseling and Advice

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.