



Labor & Employment @lert

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Illinois Legalizes Recreational Use of Marijuana Effective January 1, 2020

Key Notes:

- This alert summarizes some of the impact of this new law on employers in Illinois.

Illinois Governor JB Pritzker recently signed into law House Bill 1438, the Cannabis Regulation and Tax Act (CRTA), legalizing the recreational use of marijuana. Under the CRTA, which will take effect on January 1, 2020, adults over the age of 21 will be able to purchase cannabis for recreational use from licensed dispensaries across the state of Illinois. *It should be noted that marijuana is still classified as a Schedule I controlled substance under federal law, making its use, sale or distribution illegal.*

Although the recreational use of cannabis will soon be legal under this new state law in Illinois, the CRTA places limitations on its possession. Illinois residents may not possess more than 30 grams of cannabis flower, 5 grams of cannabis concentrate, and 500 milligrams of THC contained in a cannabis-infused product. Non-Illinois residents may not possess more than 15 grams of cannabis flower, 2.5 grams of cannabis, and 250 milligrams of THC contained in a cannabis-infused product. Because the CRTA does not alter Illinois' medical cannabis pilot program, a patient registered in the program may possess more than 30 grams of cannabis if it is grown and secured in their residence under certain conditions.

From an employment perspective, nothing in the CRTA prohibits an employer from adopting reasonable zero-tolerance or drug-free workplace policies, or employment policies concerning drug testing, smoking, consumption,

storage or use of cannabis in the workplace or while on call, provided the policy is applied in a nondiscriminatory manner. The CRTA does not require an employer to permit an employee to be under the influence of or use cannabis in the employer's workplace or while performing the employee's job duties or while on call. An employee is deemed "on call" when such employee is scheduled with at least 24 hours' notice by his or her employer to be on standby or otherwise responsible for performing tasks related to his or her employment, either at the employer's premises or another location previously designated by the employer or a supervisor to perform a work-related task.

The CRTA further does not limit or prevent an employer from disciplining an employee or terminating an employee's employment for violating the employer's employment policies or workplace drug policy. An employer may consider an employee to be impaired or under the influence of cannabis if the employer has a good faith belief that the employee manifests specific, articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including:

- symptoms involving the employee's speech, physical dexterity, agility, coordination or demeanor, or irrational or unusual behavior, or negligence or carelessness in operating equipment or machinery;
- disregard for the employee's own safety or that of others, or involvement in any accident that results in serious damage to equipment or property;
- disruption of a production or manufacturing process; or

- carelessness that results in any injury to the employee or others.

If an employer elects to discipline an employee on the basis that the employee is under the influence or impaired by cannabis, the employer must afford the employee a reasonable opportunity to contest the basis of the determination.

The CRTA does not create or imply a cause of action for any person against an employer for:

- actions including, but not limited to, subjecting an employee or applicant to reasonable drug and alcohol testing under the employer's workplace drug policy, including an employee's refusal to be tested or to cooperate in testing procedures or disciplining or termination of employment, based on the employer's good faith belief that an employee used or possessed cannabis in the employer's workplace or while performing the employee's job duties or while on call in violation of the employer's employment policies;
- actions including discipline or termination of employment, based on the employer's good faith belief that an employee was impaired as a result of the use of cannabis or under the influence of cannabis while at the employer's workplace, while performing the employee's job duties or while on call in violation of the employer's workplace drug policy; or
- injury, loss or liability to a third party if the employer neither knew nor had reason to know that an employee was impaired.

Nothing in the CRTA shall be construed to interfere with any federal, state or local restrictions on employment, or to impact an employer's ability to comply with federal or state law or cause it to lose a federal or state contract or funding.

FOR MORE INFORMATION

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