

Missouri Legalizes Recreational Marijuana and Creates Job Protections for Medical Marijuana Users: What Employers Need to Know

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On November 8, 2022, Missourians voted to legalize recreational marijuana, adopting Amendment 3 to Article XIV of Missouri's Constitution. In addition to legalizing recreational marijuana, Amendment 3 also creates job protections for medical marijuana use, which Missouri previously legalized in 2018. These changes go into effect on December 8, 2022.

Job Protections for Certain Medical Marijuana Users and Caregivers

Amendment 3 prohibits employment discrimination based on: (1) "[t]he person's status as a qualifying medical marijuana patient or primary caregiver who has a valid identification card, including the person's legal use of a lawful marijuana product off the employer's premises during nonworking hours;" or (2) "[a] positive drug test for marijuana components or metabolites of a person who has a valid qualifying patient identification card," unless one of the exceptions described below applies.

Exceptions to Job Protections for Medical Marijuana Use

Employers may continue to discharge, discipline, or take other adverse action against employees that use, possess, or are under the influence of marijuana on the premises of the place of employment or during the hours of employment. Amendment 3 also exempts certain job positions from protection, including "position[s] in which legal use of a lawful marijuana product affects in any manner a person's ability to perform job-related employment responsibilities or the safety of others, or conflicts with a bona fide occupational qualification that is reasonably related to the person's employment."

Employers may also continue to take adverse employment action against medical marijuana users when a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law (e.g., DOT regulations applicable to truck drivers).

No Job Protections for Recreational Marijuana Use

The provisions of Amendment 3 legalizing recreational marijuana do not extend job protections for recreational marijuana users. Instead, the provisions specifically permit employers to continue to (1) prohibit recreational marijuana use or possession in the workplace or on the employer's property; and (2) take adverse employment action against employees for working under the influence of marijuana.

Determining when Employees are Under the Influence of Marijuana

Amendment 3 does not provide guidance regarding what specifically constitutes evidence that an employee is working under the influence of marijuana. A positive drug test alone likely will not be conclusive because THC – the active substance in marijuana detected in drug tests – can stay in a person's system for weeks after they consume a marijuana product. We recommend that supervisors be trained to identify the signs that an employee is working under the influence of marijuana and that legal counsel be consulted prior to disciplining or terminating an employee for marijuana use unless the

employee is observed using or possessing marijuana on the premises of the place of employment or during the hours of employment.

We will continue to monitor the latest developments on the laws and regulations concerning the legalization of marijuana and the job protections associated with its use. If you have any questions concerning Missouri's new marijuana law, or other states' marijuana laws, please do not hesitate to contact any of the below Seigfreid Bingham employment attorneys or your regular contact at Seigfreid Bingham.

This article is general in nature and does not constitute legal advice. Readers with legal questions should consult the authors, Katie Conklin (kconklin@sb-kc.com) 816.265.4114 and John Vering (jvering@sb-kc.com) 816.265.4109, or other shareholders in Seigfreid Bingham's Employment Law Group, including: John Neyens (johnn@sb-kc.com) 816.265.4152, Mark Opara (mopara@sb-kc.com) 816.265.4140, Shannon Johnson (sjohnson@sb-kc.com) 816.265.4139, Brenda Hamilton (bhamilton@sb-kc.com) 816.265.4103, Julie Parisi (jparisi@sb-kc.com) 816.265.4159, Christopher Tillery (ctillery@sb-kc.com) 816.265.4157, or your regular contact at Seigfreid Bingham at 816.421.4460.