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MICHIGAN'S ADULT-USE RECREATIONAL MARIJUANA LAW TAKES EFFECT

After a successful ballot initiative in the fall of 2018, the Michigan Regulation and Taxation of Marihuana Act ("MRTMA") became effective on December 6. In essence, the law permits adults age 21 and older to possess and use marijuana for recreational purposes (within certain limits) and provides for the regulation and taxation of marijuana and dispensaries. The substance remains classified as a Schedule I drug by the U.S. Drug Enforcement Administration, meaning that it carries the same classification as heroin under federal law.

The MRTMA has prompted various questions from employers. For example:

- How, if at all, should the law impact our existing policies, including our zero-tolerance drug and alcohol policies?
- Does the fact that marijuana is now legal mean we cannot fire an employee for getting high at work or for coming to work impaired?
- Does the fact of legalization suggest that employers should act with more leniency toward employees who use cannabis off duty?
- Can we still refuse to hire someone who tests positive even if we do not know when the applicant last used marijuana?

Generally speaking, the MRTMA is not a license for employees to use or possess marijuana in the workplace and provides some important protections for employers. According to the law, it "does not require an employer to permit or accommodate conduct otherwise allowed by this act in any workplace or on the employer's property." Further, it "does not prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while under the influence of marihuana." Nor does the law "prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's violation of a workplace drug policy or because that person was working while under the influence of marihuana." The language quoted here comes directly from the new law (codified at MCL 333.27954).

PRACTICAL TAKEAWAYS

In plain terms, despite the legalization of marijuana in Michigan generally, the language of the MRTMA gives employers protections in implementing and enforcing drug-free workplace policies which, for example: prohibit use or intoxication in the workplace; provide for termination of an employee due to impairment; or proscribe hiring an applicant who tests positive.

The new recreational use law does not alter other legal considerations for employers. If an applicant or employee tests positive, employers still must consider whether there exists a duty under federal or other state laws to accommodate a person who uses marijuana for medical purposes like to relieve back pain or lessen the effects of chemotherapy. In addition, employers with union-represented employees need to consider the bargaining obligations for their workplace drug testing and conduct policies.

What about your existing policies? The MRTMA generally gives deference to how employers write their workplace drug policies. Some employers may choose to relax their policies in order to take a more permissive stance toward adult use of marijuana. Most employers, particularly those whose employees who drive or treat patients, will need a more restrictive stance. In either case, consultation with legal counsel is important in adopting and implementing policies affecting marijuana in the workplace.

If you have any questions about how Michigan's recreational marijuana law affects your organization or would like additional information about this topic, please contact [Jon Rabin](mailto:Jon.Rabin@hallrender.com) at (248) 457-7835 or jrabin@hallrender.com.