



Employment and Labor Practice Group

The Impact of New York's Legalization of Recreational Marijuana Use on State Labor Laws

Syracuse ♦ Ithaca ♦ New York City

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On March 31, 2021, New York Governor Andrew Cuomo signed the Marijuana Regulation and Taxation Act (the "Act") into law. The law makes New York the 15th state to legalize recreational marijuana. The Act itself puts forth a sweeping regulatory scheme and establishes the Office of Cannabis Management ("OCM") to implement and enforce the Act's provisions. The Act also contains several changes to New York's Labor Law affecting employee rights and employer responsibilities.

When does the Act take effect?

Many provisions of the Act do not take effect until the OCM has crafted specific regulations detailing how the sale and consumption of marijuana within the state may take place.

However, the N.Y.S. Labor Law amendments take effect immediately.

What specific provisions of the Labor Law does the Act change?

The Act amends New York Labor Law Section 201-d to protect employees who legally use marijuana outside of work hours against discrimination by their employer.

Specifically, the Act makes it unlawful for employers to refuse to hire, discharge, or to otherwise discriminate against, an employee because of their lawful use of marijuana outside of work hours, and off the employer's property.

Does this mean employers can continue to drug test employees or applicants for employment?

Drug testing employees is still permissible in New York. Moreover, the Act does not prohibit an employer from drug testing for marijuana.

However, because the Act does not allow an employer to discriminate again an employee or applicant who is legally using marijuana outside of work. Employers must revise their drug screening policies accordingly, or risk facing a lawsuit for unlawful discrimination.

If an employee is impaired by marijuana, can an employer take action against him or her?

Yes. An employer may still discharge an employee who is "impaired by the use of cannabis" while at work. Under the law, this means an employee who displays "specific articulable symptoms" of impairment while on the job. An employee who merely used cannabis outside the workplace, and even an employee who tests positive for cannabis, may not be disciplined, or terminated without proof of such impairment.

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Until the state releases more guidance and a body of caselaw develops, it is unclear exactly what constitutes "specific articulable symptoms." However, it must be more than a failed drug test.

Are any businesses exempt from following the labor law amendments?

Yes. Recreational marijuana use is still not legal under federal law. If an employer's actions are required by federal statute or regulation (or even another state mandate), then an employer may not be sued under this new section of the labor law for discriminating against an employee based on their use of recreational marijuana.

Similarly, an employer may legally terminate employees or refuse to hire applicants for recreational marijuana use if the employer would risk losing a federal contract or federal funding.

Action required.

Employers must update their employment policies on discrimination, drug testing, discipline, and termination. Management employees should also be educated on the new law's requirements and implications. If you are an employer or employee that is affected by these amendments to the labor law, we recommend that you contact our office to determine how the Act applies to your particular situation.



The attorneys at Bousquet Holstein will be monitoring new regulations as they develop. In the meantime, please contact John Valentino or Jeffrey Fasoldt if you have any questions or would like more information.



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