

What Maryland's Legalization of Recreational Marijuana Means for Employers

By Jessica Summers

On November 8, 2022, Marylanders decisively voted to legalize recreational marijuana for adults 21 and over. The law, which will go into effect on July 1, 2023, will allow for the use and possession of up to 1.5 ounces of marijuana in Maryland. Possession of larger quantities of marijuana will still be prohibited (possession of more than 1.5 oz but less than 2.5 oz. can will be punishable by a civil fine of up to \$250 and possession of more than 2.5 oz. will be punishable by a fine of up to \$1,000 or six months in jail). The ballot initiative does not immediately provide for the sale of recreational marijuana in Maryland. However, the Maryland legislature is expected to take action on this issue in the near future now that the ballot initiative passed.

Maryland employers are well advised to use the months leading up to the July 1, 2023 effective date of the new law to assess their policies and prepare for any necessary changes.

First and foremost, Maryland employer should give thought to how they want to approach the issue of off-duty recreational marijuana use by employees. Unlike some of the other jurisdictions that have legalized recreational marijuana, Maryland does not currently have any laws pertaining to lawful off-duty conduct generally, or off-duty marijuana use specifically. For example, as discussed in our recent blog, this June, DC passed a new law prohibiting employers from taking adverse action against employees for off-duty marijuana use. Other states have more general laws prohibiting employers from taking action based on any lawful off-duty conduct by employees. In the interim period before the law goes into effect, the Maryland legislature may look to enact laws that would limit what actions an employer can take related to an employee's off duty recreational marijuana use. To the extent that no such action occurs before the law goes into effect, employers will still want to consider how policies like pre-employment drug testing that includes marijuana or policies prohibiting employees from engaging in off-duty marijuana use will impact their recruitment and retention.

This will also be a good opportunity for Maryland employers to review their policies relating to the use and possession of drugs in the workplace (or implement policies if they have not done so already). Though employees will be lawfully permitted to use marijuana outside of work, employers can still prohibit employees from being impaired or using or possessing marijuana at work. Since this will be a new issue for employees, policies should specifically address recreational marijuana use to ensure that that the employer's policies and expectations are clear.

Please do not hesitate to contact our Employment Law Group if you need assistance navigating this new law.