

Legalization of Cannabis in New York: Employers Should Review and Revise Their Workplace Policies

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On March 31, 2021, New York Governor Andrew Cuomo signed the “Marijuana Regulation and Taxation Act.” The Act legalizes adult-use cannabis, expands the use of medical cannabis, and establishes the Office of Cannabis Management within the Division of Alcoholic Beverage Control to regulate and license the authorized growth and sale of cannabis. The Act provides specific protections for employees’ use of medical cannabis and recreational cannabis.

Medical Cannabis

Individuals eligible to use medical cannabis under the Act, referred to as “certified patients,” may not be denied any right or privilege solely for the certified medical use of cannabis or any other protection afforded under the Act. Additionally, “certified patients” are considered to have a “disability” under the New York State Human Rights Law and the New York Civil Rights Law. Therefore, “certified patients” cannot be discriminated against based on their disability. Additionally, employees who use medical cannabis are afforded the same rights and protections available to injured workers under the New York Workers’ Compensation Law when such injured workers are prescribed medications that may prohibit, restrict, or require the modification of the performance of their duties.

It is worth noting that when accommodating employees’ prescribed medical cannabis, employers are not required, under the Act, to enforce any policies or take any actions that would be in direct violation of federal law or cause it to lose a federal contract or funding.

Recreational Cannabis

The Act’s legislative intent states that it is not intended to limit the authority of employers to enact and enforce policies pertaining to cannabis in the workplace. However, individuals may not be denied any right or privilege solely for the use of cannabis permitted by the Act. Specifically, the Act amends the New York Labor Law protecting off-duty conduct to include an individual’s legal use of cannabis in accordance with state law. Simply stated, an employer may not discriminate against or prohibit an employee’s recreational use of cannabis outside of work hours, off the employer’s premises, and without use of the employer’s equipment or other property.

There are three limitations on the protection of off-duty conduct. An employer may restrict an employee’s off duty use of cannabis if:

- (1) the employer's actions were required by state or federal statute, regulation, ordinance, or other state or federal governmental mandate;
- (2) the employee is impaired by the use of cannabis and this impacts the employee's performance of his/her duties, and/or interferes with an employer's obligation to provide a safe and healthy work place, free from recognized hazards, as required by state and federal occupational safety and health law; or
- (3) the employer's actions in permitting recreational use of cannabis would cause the employer to be in violation of federal law or would result in the loss of a federal contract or federal funding.

Employers should review their existing policies and contact legal counsel for guidance on revising their workplace policies to comply with the new law.