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Next steps for Oklahoma employers as medical marijuana initiative passes

As a result of yesterday's vote, Oklahoma became the 30th U.S. state to legalize the use of medical marijuana. As mentioned in our earlier webinar (www.mcafeetaft.com/marijuana) and other communications on this topic, for months we've been reviewing this measure and monitoring activity in other states in an effort to anticipate what impacts the legalization of medical marijuana might have on Oklahoma as well.

Without a doubt, Oklahoma employers will face a time of uncertainty in the coming months, as many questions remain unanswered for now. Nevertheless, there are some important steps you should take now to address workplace issues certain to arise in the future.

Countdown to implementation

While the new statute is set to go into effect in 30 days, it's important to remember that a fully formed medical marijuana industry will not happen overnight in Oklahoma. Judging from what has occurred in other states, significant legislative, regulatory and legal activity is sure to follow before medical marijuana availability and use is sorted out.

In fact, weeks before the vote, Governor Fallin announced that she would likely call for a special session of the Oklahoma Legislature to develop legislation addressing the practical implementation of the new law if the measure was approved. It's also reasonable to expect that the Oklahoma State Department of Health (ODH), which is responsible for approving applications and administering licensing for the use, growing and dispensing of medical marijuana, will continue to spend a significant amount of time and diligence



preparing regulations that will govern the "nuts and bolts" of its availability and usage. In fact, the ODH has announced emergency rules regarding medical marijuana use will be considered at its July 10 meeting. Finally, because of the inconsistency between this law and federal law, don't be surprised if there is litigation filed arguing that the federal law prohibiting marijuana overrides Oklahoma's new law.

Start educating your workforce now

Misinformation about what the new law permits and does not permit is rampant. That means now is the time to educate your employees about medical marijuana and your workplace.

First, the law only applies to individuals who have a valid medical marijuana license issued by the ODH. For those who do not possess an Oklahoma license, marijuana use and possession is just as illegal as it was before the election.

Also, this is a good opportunity to explain to employees that the ODH is developing medical marijuana regulations that will apply to employees and employers.

Next, point out to your workforce that the possession or use of marijuana at work or during hours of employment is still prohibited, and that is true whether or not someone holds a medical marijuana license. Emphasize that you intend to continue to enforce your “no use or possession” rules, including taking disciplinary action when appropriate.

With the new law, expect employees to challenge the employer’s right to drug test for marijuana use. Make sure your workforce understands that being impaired or under-the-influence of marijuana while at work remains strictly forbidden under all circumstances and may lead to termination. Make it clear that the employer may still conduct a drug test if an employee’s behavior or conduct demonstrates they may be impaired.

Like many human resource issues, your managers and supervisors will be an employer’s first and most important line of defense. They are the ones who will be dealing directly with medical marijuana issues on a day-to-day basis. Make sure your managerial staff understands the new marijuana law, as they are likely to have heard some of the same misinformation as your workforce. In fact, don’t be surprised if employees start asking their supervisors questions about how work rules may now change.

Supervisors still have the ability to take action based on workplace possession or use of marijuana and should continue to monitor that. Workplace impairment — for marijuana or any other substance — is always prohibited. Take the time to increase your supervisors’ skills at recognizing and documenting impairment so you are in a position to continue to maintain a safe workplace.

Lastly, review and update your drug testing program and any policies that address workplace possession, use or impairment. You will want those policies to be consistent with the new law and give you and your supervisors the right to take disciplinary action involving marijuana when lawful and appropriate.

Start now ... and stay tuned

Oklahoma’s new medical marijuana law presents challenges for employers, and time is of the essence. Educate your workforce on how the new law actually works and what rules still apply in the workplace. Enlist your supervisors and managers’ help with the education process and provide them the training they need to address workplace marijuana issues they will inevitably face.

In the meantime, we will be monitoring developments at the Capitol, at the Department of Health, and in the courts to keep track of medical marijuana developments that affect Oklahoma employers. While we will continue to keep you advised, please don’t hesitate to contact your McAfee & Taft labor and employment attorney if you have any immediate questions.

Resources

- » COMPLIMENTARY WEBINAR
Medical Marijuana in the Oklahoma Workplace
www.mcafeetaft.com/marijuana
- » McAfee & Taft Labor & Employment Group
www.mcafeetaft.com/employment
- » EmployerLINC: Legal information, news and commentary on issues affecting private, public and nonprofit employers
www.employerlinc.com