



Oklahoma Employer's Law Blog

published by Kristen L. Brightmire – of Doerner, Saunders, Daniel & Anderson, L.L.P.

Oklahoma legalizes medical marijuana – the real impact on Oklahoma employers.

□ [July 1, 2018](#)[July 2, 2018](#) □ [kbrightmire](#)

On June 26, 2018, the voters of Oklahoma passed state question 788 legalizing medical marijuana. Much has been written about the law, some true and some embellished. There is now a rush to find out what this means. My advice to employers, take a moment. Consider the text of the law. Consider how this will impact your place of employment and how it will not.

The gist of the law is that employers cannot discriminate against an applicant or employee because that person has a medical marijuana license or because such person holding a medical marijuana license has a drug test showing positive for marijuana or its components. Of course, that goes out the window if there are federal laws or regulations which trump this state law.

Immediately, the impact on your place of employment is answering the many questions you will get. Be ready for that. Here are two overriding themes to keep in mind.

First, you can still prohibit the possession and use of marijuana at work and during working hours – even medical marijuana. That hasn't changed.

Second, marijuana is still illegal under federal law. So, for example, if you are subject to the Drug Free Workplace Act or if you have employees subject to federal Department of Transportation drug testing regulations, that is still in place. Federal law doesn't recognize "medical" marijuana, and state question 788 doesn't change that.

So how does this law change your rights as an employer?

- An Oklahoma employer cannot discriminate against a person because of that person's status as a medical marijuana license holder.
 - So don't do that. Don't even ask about it. An employer has no need to know if any of its applicants or employees are holding a medical marijuana license.
- An Oklahoma employer who tests its Oklahoma employees under Oklahoma state law cannot take an adverse employment action against a holder of a medical marijuana license solely based upon the

results of a drug test showing positive for marijuana or its components.

- So don't do that. You can continue with your drug testing program in compliance with Oklahoma law. You can continue to test for marijuana. Because Oklahoma law requires that the employee have the "ability ... to explain, in confidence, the test results," a person holding a medical marijuana license can simply explain his or her situation if the result is positive. Hopefully, this will all be handled by your testing facility and Review Officer such that you (the employer) will never even know. This will be treated no differently than any other reason a person tests positive but is able to medically explain the result to the Review Officer's satisfaction.

What should you do right now? Be ready with a communication for your employees so they will know your position on the key points. Understand that the law has just passed and everyone expects there will be changes, regulations, etc., in the coming months. Remain flexible to address whatever will happen.

One such area which is certainly in a state of flux is the level of protection medical marijuana has under the Americans with Disabilities Act (ADA). The ADA is a federal law, and marijuana is illegal under federal law. Thus, the majority of cases have found (so far) that employers need not accommodate the use of medical marijuana. However, an employer who asks about such use may learn about an underlying medical condition which may disclose a disability which is covered by the ADA. Further, the Oklahoma Anti-Discrimination Act not only prohibits disability discrimination, but like the ADA, requires reasonable accommodations for disabilities. As medical marijuana is legal in Oklahoma, it remains to be seen if lawsuits might be brought under state law for claims of failure to accommodate.

All this to say, employers would be wise to simply not inquire as to a person's status as a medical marijuana license holder. Keep your focus on an employee's job performance.

[Drug Testing, Marijuana](#) [Drug Testing, Marijuana](#)

%d bloggers like this: