

Legal Update

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LEGAL MARIJUANA IN ILLINOIS AND ITS IMPACT ON A DRUG-FREE WORKPLACE

By Paul M. King

Effective January 1, 2020, recreational cannabis use will be legal in Illinois. The Cannabis Regulation and Tax Act (the “Act”) prevents employers from disciplining or terminating an employee for their lawful use of cannabis outside the workplace. As such, employers may be concerned about the impact that the Act may have inside the workplace. Fortunately, the Act provides safeguards that allow employers to adopt and enforce reasonable zero-tolerance or drug-free workplace policies.

For example, the Act allows employers to prohibit the use and/or possession of cannabis inside the workplace. Further, the Act allows employers to prohibit employees from being impaired or under the influence of cannabis while at work or while performing his or her job duties. This includes employees who use cannabis outside the office, but whose outside use caused them to be impaired or under the influence of cannabis at work or while performing his or her job duties. In that case, the employer may terminate or discipline the employee if the employer has a good faith belief that the employee was either impaired by or under the influence of cannabis while at work or while performing his or her job duties.

The Act contains a non-exhaustive list of symptoms that the employer may use to determine if an employee is impaired, or under the influence of cannabis, including: impaired speech; decreased physical dexterity; lack of coordination; changes in demeanor; irrational or unusual behavior; and the employee’s involvement in an accident. To enforce a drug-free workplace policy, employers should consider training managers to spot these symptoms. If an employer does terminate or discipline an employee, they must allow him or her a reasonable opportunity to contest the basis for the employer’s determination that the employee was impaired or under the influence of cannabis.

Finally, the Act allows employers to implement reasonable drug and alcohol testing policies for employees and applicants. Such policies must be drafted with care. Otherwise, the employer could be subject to a discrimination claim, a claim under the Americans with Disabilities Act, or other state or federal law claims.

Under Federal law, the recreational use of cannabis remains illegal. Thus, employers must maintain a drug-free workplace if they are in an industry regulated by the federal government (e.g., trucking, aviation, mass transit, etc.), or are involved in federal contracting. Employers not subject to federal regulation may still want to adopt drug-free workplace policies in response to the Act. Such policies may help employers avoid liability for the actions of an impaired employee. If an employer intends to amend or adopt a drug-free workplace policy in Illinois, it would be advisable to first consult legal counsel.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Paul M. King, 312-701-6842, pking@fvldlaw.com, or your regular FVLD contact.

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