



## Eye On The Law

### More Details Concerning Recent Legislation

#### Marijuana Legalization

We have received many calls asking about the new law legalizing marijuana and how it may impact your organization's operations. These are some of the questions you have asked:

- What do I do if my employee comes to work under the influence of marijuana?
- We have a zero-tolerance drug policy, does that have to change?
- Do we have to stop testing for marijuana as part of our new hire or random drug tests?
- Can we test an employee when we suspect she is under the influence of marijuana?

[P.A. 21-1](#) of the June Special Session AN ACT CONCERNING RESPONSIBLE AND EQUITABLE REGULATION OF ADULT-USE CANNABIS became law on June 22<sup>nd</sup>. **However, the law's provisions which apply to employers, won't take effect until July 2022.**

Fortunately, the final version of the Act contains important protections for employers. **The new law allows an employer to maintain a policy prohibiting marijuana possession or use as long as the policy is in writing (on paper or in an electronic document) and made available to each current employee before the law takes effect and to each prospective employee when making an offer of hire.** The policy may include a prohibition on the use of marijuana on company premises as well as outside the workplace. Like any other policy, if an employee is in violation (reports to work under the influence), he or she is subject to disciplinary action.

An employer can continue to test prospective employees who have a conditional offer of employment for marijuana and can test current employees for marijuana when there is **a reasonably suspicion** that the employee is under the influence while at work. In these respects, marijuana use is treated much like an employee's alcohol use.

There are several categories of exemption specified in the Act. Exempted positions include public safety jobs, certain jobs requiring driving a motor vehicle and a few other types of positions. Exempted employers include those organizations whose primary activity is construction, manufacturing, transportation, utilities, educational services, health care services and public safety. The Act's employment-related provisions do not apply to exempted employers and employees holding exempt positions.

It is important to remember that the use of **medical marijuana** is treated very differently due to the implications under the Americans with Disabilities Act and state law prohibiting discrimination against persons with disabilities. **In general, the use of medical marijuana should be treated like the use of any other prescription drug.**

Let us know if you have any questions on marijuana in the workplace or need assistance interpreting the provisions of the 300-page bill. ***As most of you know we have employer checklists and guides for reasonable suspicion testing. We also conduct management training in this area.***

### **Changes to Family and Medical Leave**

Speaking of interpreting huge bills . . .

Tucked inside the enormous, 790-page budget implementer bill is a section changing the process for claims under the State's Family and Medical Leave Act. **Previously, employees were required to bring any complaints of FMLA violations to the Department of Labor for a hearing before proceeding to court. Under the new legislation, employees have the option of bringing their complaints directly to court.**

### **Recall of Laid-Off Employees – More Limited Than Initial Legislation**

P.A. 21-189, which became effective with the Governor's signing on July 13, requires certain **private sector union and nonunion employees laid off during the COVID-19 pandemic to be notified** when a position becomes available and rehired by seniority. The Act, as signed by the Governor, **applies only to certain hotels, lodging houses, food service contractors and building service enterprises (maintenance and security) with at least 15 employees.** If an employer covered by the Act's provisions hires someone else instead of a laid-off employee, the Act requires the employer to give the laid-off employee a written notice that includes the reasons for the decision. The Act allows a laid-off employee who believes his or her rights under the Act have been violated to bring a civil action in the Superior Court.

Originally, this bill was drafted to apply to **all** private sector employers with 5 or more employees. A last-minute amendment greatly restricted the reach of the bill. **We will keep you updated regarding any possible expansion of this law in the next legislative session, which would have huge implications for employers throughout the state.**

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We have a new website. Please take a look @ <https://www.workplacelawyer.com/> and let us know what you think.

***If you have concerns about this or any other workplace or litigation issue, please contact David Ryan at david.ryan@ryan-ryan.net or by telephone at 860.460.7139 (mobile) or 203.752.9794 (office).***

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