

## Blog Post

# Smoke Clears For Employers Under New Illinois Marijuana Law

July 16, 2019

As marijuana legalization laws spread, some states are more focused on employee protections, but Illinois recently adopted a new marijuana law that includes extensive workplace protections for employers. Last month, the Illinois legislature passed and Illinois Governor Jay Pritzker signed the Cannabis Regulation and Tax Act. The Cannabis Act goes into effect on January 1, 2020. Beginning on that date, Illinois residents over 21 may legally possess 30 grams of marijuana flower and five grams of marijuana concentrate.

The workplace protections for employers include:

- It expressly permits employers to adopt and maintain zero tolerance policies concerning drug testing, smoking, consumption, storage or use of cannabis in the workplace or while on call (provided that the policy is applied in a non-discriminatory manner)
- It permits employers to prohibit use of cannabis in the workplace (defined as any building, real property and parking area under the control of the employer, any area used by an employee while in performance of the employee's job duties, and vehicles, whether leased or rented)
- It permits employers to discipline or terminate employees who violate an employer's workplace drug policies

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The Cannabis Act also states that it does not provide a cause of action against an employer who subjects employees or applicants to reasonable drug and alcohol testing, or who disciplines or terminates an employee based on a good faith belief that the employee was impaired as a result of cannabis use or under the influence of cannabis while at work or on call. The Cannabis Act includes the following non-exhaustive list of symptoms an employer can consider in determining whether an employee is impaired or under the influence of cannabis:

- Impaired speech, physical dexterity, agility, or coordination
- Changes to demeanor, including irrational or unusual behavior
- Negligence or carelessness in operating equipment or machinery
- Disregard for the safety of the employee or others
- Involvement in any accident that results in serious damage to equipment or property
- Disruption of a production or manufacturing process
- Carelessness that results in any injury to the employee or others

The Cannabis Act also provides that an employer may continue any testing program required by federal, state or local restrictions, so federal contractors and companies that must comply with Department of Transportation regulations may maintain those cannabis-related policies.

In anticipation of the Act coming into effect, Illinois employers should evaluate their drug policies, including determining whether to specify that on-the-job marijuana consumption or being impaired or under the influence of marijuana at work or on call are against company policy and could lead to disciplinary action, up to and including termination.

Employers outside of Illinois should also take note of this new law. All but four states have legalized some form of cannabis (including medical and low-THC products). The District of Columbia and 11 states – Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, and Washington have the most expansive laws legalizing marijuana for recreational use. And with the new laws, lawsuits by employees who were terminated based on marijuana use are on the rise. Early on, most courts sided with employers but increasingly, courts in states with newer marijuana laws have begun to find for employees, particularly where the new laws require evidence of impairment in the workplace, not just a positive drug test. Some states are also extending protections to job applicants. Last month, Nevada passed a law prohibiting employers from refusing to hire an employee based solely on the employee's cannabis use. The Nevada law goes into effect on January 1, 2020. Other states, including Rhode Island and Massachusetts, have considered, or are currently considering, similar laws regarding applicants.

Given this changing area of the law, employers should review their drug testing policies to ensure that they comply with the laws in all states in which they operate. If you have any questions about these new laws and their impact on your company, contact your Akerman Labor and Employment lawyer.

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