

THE IMPACT OF MISSOURI AMENDMENT 3 ON EMPLOYERS

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MISSOURI – AMENDMENT 2 (2018)

- Legalized cultivation, sale and use of medical marijuana
- No cause of action against employers for discrimination

MISSOURI – AMENDMENT 3 (2022)

- Legalizes cultivation, sale and use of recreational marijuana
- Does not permit:
 - Public use
 - Driving while under the influence
 - Use in the workplace
 - Use by individuals under 21
- Establishes regulatory framework for Department of Health and Senior Services to follow in administering the law.
 - Taxation
 - Cultivation
 - Registration of manufacturers and at-home

MISSOURI – AMENDMENT 3 (2022)

- Beneficiaries of tax revenues
 - Veterans' programs
 - Legal services for low-income residents
 - Other non-profit organizations
- Expungement of certain criminal arrests, pleas and convictions
 - Restores person to status prior to arrest, plea or conviction
 - Does NOT apply to crimes involving:
 - Violence
 - Delivery/distribution to minors
 - Operation of a motor vehicle while under the influence of marijuana

MISSOURI – AMENDMENT 3 (2022)

- Medical Marijuana Changes
 - Nurse practitioners may recommend use
 - Only licensed physicians previously could so recommend
 - Registration cards valid for 3 years
 - Lengthened from 1 year

EMPLOYMENT PROTECTIONS

- Medical Marijuana - Amendment 2 (2018)
 - No cause of action against employers for wrongful termination, discrimination, or similar claim where employer has a policy prohibiting individual from being under the influence while at work.
 - Employers treated issue as one of accommodation under the Missouri Human Rights Act
 - Does underlying condition render individual a qualified individual with a disability requiring employer to engage in interactive process to determine reasonableness of accommodation being requested?
 - If yes, then would allowing individual to take medical marijuana be a reasonable accommodation under the particular facts and circumstances?

EMPLOYMENT PROTECTIONS

- Medical Marijuana - Amendment 3 (2022)
 - Express prohibition against employment discrimination
 - An employer may not discriminate against an individual who owns a medical marijuana registration card with respect to hire, termination and any term or condition of employment.

EMPLOYMENT PROTECTIONS

- Medical Marijuana - Amendment 3 (2022)
 - Prohibition against discrimination does not apply if:
 - Employer is federal contractor or subcontractor or otherwise would lose a monetary or licensing-related benefit under federal law
 - Individual is under the influence at work in violation of company policy
 - Individual tests positive for marijuana and the employer establishes they used, possessed or were under the influence on the employer's premises during working hours
 - Individual holds a position such that the use of marijuana "affects in any manner" their ability to safely perform their job responsibilities or the safety of others, or such use conflicts with a bona fide occupational qualification that is reasonably related to their employment

EMPLOYMENT PROTECTIONS

- Recreational Marijuana - Amendment 3 (2022)
 - Grants no rights to users of recreational marijuana in their employment.
 - Employer is not required to permit or accommodate an individual's use of recreational marijuana in violation of its policies.
 - Employers can:
 - Prohibit the use, sale and possession of marijuana on its premises
 - Prohibit employees from being under the influence while on working time
 - Refuse to hire, or discipline, discharge or take other action against individuals who are deemed to be under the influence at work.

EMPLOYMENT PROTECTIONS

- What is “under the influence”?
 - Not defined in either Amendment 2 or 3
 - Impairment varies significantly from person to person
 - Testing not definitive in determining under the influence
 - Train managers/supervisors on how to detect a person’s status
 - Recognition of behaviors
 - Documentation of behaviors

USE THE UNION AS YOUR SHIELD

- Review CBAs for policies prohibiting drug use
- Follow framework in Management Rights clauses to adopt
- Be willing to utilize arbitration as a solution and alternative to expensive litigation – don't let those lawyers make all that money

POLICY SUGGESTIONS

- Prohibit use of any alcohol, illegal drugs, other controlled substances or intoxicants of any kind, whether legal or illegal, on Company property, in Company vehicles, or while on Company equipment
- Prohibit illegal or unauthorized use of prescription drugs
- Prohibit intentional misuse or abuse of prescription medications
- Prohibit any employee from being under the influence of alcohol, marijuana or other intoxicants, drugs, and any controlled substances during working hours, including breaks and lunch periods.

POLICY SUGGESTIONS

- Put employees on notice of potential discipline if observed engaging in any prohibited activities.
- Using prescribed medical marijuana or legal marijuana or other hemp-related products which causes BOTH the presence of the drug to be in the employee's system and an impairment is a violation of the policy.
- Use of any prescription and legal drugs and alcohol must not impact the safe and efficient performance of their job.
- Require employees to report to supervisor prior to commencing work if they are under the influence of any substance.
- Evaluate what positions are safety-sensitive and what are not.

POLICY SUGGESTIONS

- Describe reasonable suspicion drug testing procedures.
- Require that managers/supervisors be trained to recognize and document objective signs that create reasonable suspicion. Notify HR or a more senior management official if someone is going to be sent for a reasonable suspicion test.
- Consider the following when making determination of reasonable suspicion:
 - Drowsiness
 - Bloodshot eyes or dilated pupils
 - Slurred or incoherent speech
 - Alcohol on breath or odor of drugs
 - Poor physical coordination
 - An accident or other impaired work performance
 - Physical or verbal altercation
 - Unusual behavior or response to a situation (e.g., excessive laughter)
 - Possession

Q & A

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THANK YOU!