Recent Developments Regarding Legalized Marijuana in the Workplace

Ohio Chamber of Commerce | Bowling Green Chamber of Commerce

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Business is Booming

Estimated Medical Marijuana Sales in 2019: $12.4 billion

$16.3 billion projected in 2020

Projected medical and recreational marijuana market in 2024: $37.3 billion

Average price per ounce: $320.10
Ohio’s Statistics

- 52 licensed dispensaries in the state
- 168,678 Recommendations
- 131,654 Registered patients
- 670 Physicians with Certificates to Recommend
Medical Marijuana Sales in Ohio

Through August 17, 2020:
- 21,340 lbs of plant material
- 1,377,123 units of manufactured product
- $176.1 million in sales
Ohio Legislative Activity

• > 30 localities have decriminalized possession and trafficking of marijuana
• Statewide proposed decriminalization legislation (HB 642)
• Statewide proposed legislation to expand use for anxiety, autism spectrum disorder, and opioid use disorder (HB 650)
• Statewide proposed legislation to allow cultivation and possession of marijuana, modify criminal penalties, allow expungement of convictions (HB 634)
• Recreational ballot language rejected
COVID-19 and Marijuana

• Marijuana spending projected to increase over 30% this year
• Increased use during pandemic (higher doses and greater frequency)
• Shortage of $ could speed federal and state legalization legislation
• Stay at home orders hurt retail business in Michigan, Colorado, California
• Drug testing challenges (i.e. sample collections)
MJ as an essential business

30 states deemed marijuana as an essential business during COVID-19 shutdowns

7. Healthcare and Public Health Operations. For purposes of this Order, individuals may leave their residence to work for or obtain services through Healthcare and Public Health Operations.

Healthcare and Public Health Operations includes, but is not limited to: hospitals; clinics; dental offices; pharmacies; public health entities, including those that compile, model, analyze and communicate public health information; pharmaceutical, pharmacy, medical device and equipment, and biotechnology companies (including operations, research and development, manufacture, and supply chain); organizations collecting blood, platelets, plasma, and other necessary materials; licensed medical marijuana dispensaries and licensed medical marijuana cultivation centers; obstetricians and gynecologists; eye care centers, including those that sell glasses and contact lenses; home healthcare services providers; mental health and substance use providers; other healthcare facilities and suppliers and providers of any related and/or ancillary healthcare services; and entities that transport and dispose of medical materials and remains.
Marijuana and quarantine

“In the best interest of public health and safety, NORML encourages cannabis consumers not to congregate either outdoors or indoors in groups this 4/20.”

-Norml Executive Director Erik Altieri
Medical MJ Delivery

Dispensaries in DC allowed to deliver cannabis and provide curbside and at-the-door pickup.

Pot from above? (San Francisco entrepreneurs accepting bitcoin)
Legalized Recreational Marijuana

- Alaska
- California
- Colorado
- DC
- Illinois
- Maine
- Massachusetts
- Michigan
- Nevada
- Oregon
- Vermont
- Washington
Marijuana and Employment

Approximately 250,000 marijuana industry jobs currently

Projections for > 1 million marijuana industry jobs if federal legalization
November 2020 Ballot Initiatives

New Jersey (recreational)
Arizona (recreational)
Mississippi (medical)
Montana (recreational)
South Dakota (medical and recreational)
Pennsylvania

September 16, 2020 pro-marijuana rallies supported by Pa. Governor and Lt. Governor.

Reaction to proposed NJ legislation
  ◦ Potential loss of revenue to NJ
  ◦ “Our farmers would grow better marijuana than New Jersey’s.”
Marijuana Trends

Increased use by older Americans as sleep aid and anxiety relief

New marijuana products such as tinctures, lozenges, gummies, and ... chocolates

New testing developments (marijuana breathalyzers for field test measuring THC levels)
Federal Law and Marijuana

• Federal – Marijuana continues to be classified as a Schedule I drug under the Controlled Substances Act

• DOT: “It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation’s drug testing regulations to use marijuana.”
Marijuana Opportunity Reinvestment and Expungement Act (MORE Act) sponsored by Jerrold Nadler (H.R. 3884)

VP Candidate Harris is sponsor of companion Senate bill (S.227)

- Remove cannabis from schedules of controlled substances
- Mandate that BLS compile and maintain demographic data for owners and employers in cannabis industry
- New tax for cannabis sales
- New trust fund for taxes
- Establish Cannabis Justice Office to administer Community Reinvestment Grant Program
- Expunge prior cannabis convictions and review current sentences
Industrial Hemp and Cannabidiol

Controlled Substance Act
• “Marihuana” includes all parts of cannabis plants except “mature stalks” (but not extracted resin) or “seeds”

2018 Farm Bill Amendments
• “Marihuana” as defined by CSA does not include “hemp”
• “Hemp” is a cannabis plant and derivatives with THC content of 0.3% or less
• MJ derived CBD with > 0.3% content is still illegal as Schedule I controlled substance
Ohio Hemp Law

- Ohio SB 57 decriminalizes “hemp”
- “Hemp” is not Schedule I drug in Ohio
- How does an employer or law enforcement differentiate between hemp and marijuana?
“Green” Construction - “Hempcrete” and Hemp Related Building Materials
Medical Marijuana (Not Hemp or CBD) in Ohio

Qualifying Medical Conditions

Acquired immune deficiency syndrome;
Alzheimer's disease;
Amyotrophic lateral sclerosis;
Cancer;
Chronic traumatic encephalopathy;
Crohn's disease;
Epilepsy or another seizure disorder;
Fibromyalgia;
Glaucoma;

Hepatitis C;
Inflammatory bowel disease;
Multiple sclerosis;
Parkinson's disease;
Positive status for HIV;
Post-traumatic stress disorder;
Sickle cell anemia;
Spinal cord disease or injury;
Tourette's syndrome;
Traumatic brain injury; and
Ulcerative colitis
Qualifying medical conditions also include . . .

• Pain that is either:
  • Chronic and severe; or
  • Intractable.

• Any other disease or condition added by the State Medical Board

Ohio Medical Board Denies Petition to Add “Bengals/Browns Fan” as Condition to Get Medical Marijuana – Time to Reconsider?
Impact Of Marijuana Use On Employment

Ohio Employers:

- Do not have to permit or accommodate an employee’s use, possession, or distribution of medical marijuana.

- May refuse to hire, discharge, discipline, or otherwise take adverse action against someone because of the individual’s use, possession, or distribution of medical marijuana.

- May establish and enforce drug testing policies, drug-free workplace policies, or zero-tolerance drug policies.

- Have “just cause” for the purposes of unemployment compensation to fire employees for violating drug-free workplace policies or zero-tolerance drug policies.
Michigan Marijuana Update

- Possession and use of marijuana is legal
- Regulations:
  - 2.5 ounces of marijuana on their person
  - 10 ounces of marijuana at home
  - Can grow up to 12 plants/can “gift” up to 2.5 ounces
  - Driving under the influence and consuming marijuana in public remains illegal
  - Retail stores allowed (and open)
Illegal except for CBD Oil for medical purposes
  ◦ No more than 0.3% THC
Illinois

- 11th state to legalize recreational marijuana
- **Became legal January 1, 2020**
- Up to 30 grams (about 1 oz.)
- Can home grow 5 plants
- Pardons, expungement and decriminalizations
State Law Issues

New York (January 2020)
- Employees and applicants who are registered medical marijuana users are “disabled” under NY FEP laws
- January 31, 2020 NY State Bar Association endorses legalization of recreational marijuana (Gov. wants 1 oz./legislature wants 30 oz.)

Utah (March 2020)
- Medical marijuana program began March 1, 2020

Michigan (February 2020)
- Legislature proposes mandatory warning labels for pregnant women and nursing mothers on marijuana products

Colorado (February 2020)
- 10th Circuit Court of Appeals rules FLSA applies to employees at recreational marijuana employer despite “illegal” activities under federal law

California (January 2020)
- Law allows parents and guardians to bring and administer cannabis products to students at school (K-12) (See also, Illinois, Colorado, Maine, New Jersey, New Mexico, and Washington)
Workers’ Compensation

Workers’ Compensation injuries which are caused by the employee’s being under the influence of marijuana are not compensable under Ohio’s Worker’s Compensation law.
Payment for Medical Marijuana in Ohio

Ohio BWC’s limits on reimbursements

- Covered drugs are limited to those approved by USFDA
- BWC-funded prescriptions must be dispensed by a registered pharmacist from an enrolled provider (not marijuana dispensaries)
- BWC reimburses only for drugs on pharmaceutical formulary (marijuana is not on formulary)
Payment for Medical Marijuana in Other States

New Jersey – Employer must reimburse employee for costs of medical marijuana to treat chronic pain caused by work related injury

New Mexico – medical marijuana treatment may be reasonable and necessary and, if so, the employer and insurer must pay

Minnesota permits medical marijuana as a form of treatment which is reimbursable in workers’ compensation claims

See also, Massachusetts, Maine
On the horizon?
Questions?

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