

EMPLOYER PROTECTIONS

UNDER ILLINOIS RECREATIONAL CANNABIS LAW

- » **As of January 1, 2020, adults 21 or older in Illinois** may possess small amounts of and use cannabis recreationally.
- » **Employers may adopt or maintain** reasonable and non-discriminatory zero tolerance or drug free workplace policies.
- » **Employers may also adopt or maintain** reasonable and nondiscriminatory drug testing policies, and may discipline or terminate an employee or withdraw an offer from an applicant based upon a failed drug test.
- » **Employers may not, however,** refuse to hire, discharge, or discipline an individual for using lawful products such as cannabis off the employer's premises during nonworking and non-call hours. This prohibition does not limit an employer's right to refuse to hire, discharge or discipline an individual for testing positive for cannabis use pursuant to a lawfully administered drug test as part of a reasonable workplace drug policy.
- » **Employers may discipline or terminate an employee** who violates an employment policy related to cannabis use or possession, including an employee who is impaired or under the influence of cannabis while at work or on call.
- » **Employers seeking to discipline or terminate an employee** for impairment while at work or on call must have a good faith belief that the employee has specific and articulable signs of impairment, including speech, physical dexterity, coordination, unusual behavior, etc.
- » **If an employer decides to discipline the employee** for impairment on the job, the employee must be given a reasonable opportunity to contest the determination.
- » **Employers should seek legal advice** prior to terminating an employee because an employee with a disability who tested positive or was impaired may have rights under other laws such as those requiring a workplace accommodation.
- » **An employee or applicant does not have a cause of action** against an employer for subjecting the employee to reasonable drug and alcohol testing under the employer's policies, or for disciplining or terminating the employee based on the employer's good faith belief that the employee used, possessed, or was under the influence of cannabis in the workplace, while performing the employee's job duties, or while on-call.
- » **Employers should continue to abide** by any existing federal, state or local restrictions on employment with respect to cannabis use (i.e. testing requirements mandated by the U.S. Department of Transportation), and further, they need not accommodate employees' recreational use of cannabis, if such use will cause the employer to lose a state or federal contract or funding.

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