



e-Alert

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Rhode Island Legalizes Recreational Cannabis

Background

The Rhode Island Cannabis Act was signed into law on May 25, 2022. While medical cannabis has been legal in Rhode Island since 2006, the new law permits residents over 21 years of age to possess and consume cannabis for recreational purposes, similar to many other states. Employers are still able to implement policies prohibiting employees from being under the influence of cannabis in the workplace, which includes remote work, however, the law limits the ability of employers to take adverse employment actions for off-duty cannabis use.

Summary

From an employment perspective, employers are not required to accommodate the use or possession of cannabis or marijuana, or an employee being under the influence of marijuana in any workplace or other location where an employee performs work (this includes remote work.)

What this new protection for off-duty use means is that employers may not “fire or take disciplinary action against an employee solely for the employee’s private, lawful use of

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cannabis outside the workplace and as long as the employee has not and is not working under the influence of cannabis." The law also advises that an employee is not considered "under the influence solely for having cannabis metabolites in their system." Overall, the legalization of recreational marijuana limits an employer's actions based on pre-hire or suspicion-based drug testing results.

Exceptions

Employers with employees subject to a collective bargaining agreement or who are federal contractors subject to federal law are not required to comply with this new law.

For work performed in safety-sensitive positions (defined as "hazardous, dangerous or essential to public welfare and safety") employers can have a policy prohibiting an employee's use of cannabis 24 hours prior to beginning work. This poses a challenge for employers as testing methods typically do not identify the time of cannabis use and cannabis metabolites could still be present outside the 24-hour window. Note that drivers of commercial motor vehicles who are subject to the U.S. Department of Transportation's drug and alcohol testing regulations never may use marijuana and will be disqualified from driving if they test positive for marijuana.

Employer Next Steps

- Employers who perform drug testing should review their policy against Rhode Island's [General Laws § 28-6.5-1](#) to ensure compliance as well as analyze the risk vs reward of continuing drug testing.
- Employers should review their Drug and Alcohol Use policy and update any sections impacted by the law.
- Consider training managers and supervisors on how to recognize and document reasonable suspicion as well as how to respond if an employee is under the influence at work.
- If you are a Full-Service or Virtual HR client and would like our assistance with updating your policy, please [email us](#).
- If you have further questions regarding this e-Alert, please [email us](#).

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