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Client Alert: GREEN WAVE: Michigan Becomes the First Midwestern State to Legalize Recreational Marijuana

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On November 6, 2018, Michigan became the first state in the Midwest to legalize recreational marijuana. Proposal 1, an indirect initiated state statute, was approved by 56% of the voters. Michigan is now the 10th state to allow marijuana for recreational use, joining Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon, Vermont, Washington, and Washington, D.C. Separately on Election Day, both Missouri and Utah legalized medical marijuana.

The Michigan Regulation and Taxation of Marijuana Act's purpose is to make marijuana legal under state and local law for adults 21 years of age or older, make industrial hemp legal under state and local law, and control the commercial production and distribution of marijuana under a system that licenses, regulates, and taxes the businesses involved. In brief, the law:

1. Allows individuals 21 and older to purchase, possess, and use marijuana and marijuana-infused edibles, and grow up to 12 marijuana plants for personal consumption. However, in October 2018, Michigan enacted a law that prohibits the sale of marijuana-infused alcoholic products.
2. Imposes a 10-ounce limit for marijuana kept at residences and requires amounts over 2.5 ounces be secured in locked containers.
3. Creates a state licensing system for marijuana businesses and allows municipalities to ban or restrict marijuana businesses.
4. Permits retail sales of marijuana and edibles subject to a 10% tax, dedicated to implementation costs, clinical trials, schools, roads, and municipalities where marijuana businesses are located. The Michigan Senate Finance Industry estimates that legalization could generate \$287 million in tax revenue in 2023.
5. Changes several current marijuana-related violations from crimes to civil infractions.

Michigan's Department of Licensing and Regulatory Affairs has up to a year to develop the rules and regulations that will govern the recreational marijuana industry before it begins accepting applications

for recreational licenses.

While the law does not affect a person's rights and obligations concerning the use of medical marijuana which is already permitted under Michigan's law, there are numerous prohibitions concerning recreational use. Among other activities, the law does not authorize:

1. operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marijuana;
2. consuming marijuana while operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat;
3. smoking marijuana within the passenger area of a vehicle upon a public way;
4. consuming marijuana in a public place or smoking marijuana where prohibited by the person who owns, occupies, or manages the property;
5. cultivating marijuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area;
6. possessing marijuana accessories or possessing or consuming marijuana on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility; or

Further, an employer is not required to permit or accommodate conduct otherwise allowed in any workplace or on the employer's property. An employer may refuse to hire, discharge, discipline, or otherwise take adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because that person violates a workplace drug policy or because that person was working while under the influence of marijuana. Finally, a person may prohibit or otherwise regulate the consumption, cultivation, distribution, processing, sale, or display of marijuana and marijuana accessories on property the person owns, occupies, or manages. However, a lease agreement may not prohibit a tenant from lawfully possessing and consuming marijuana by means other than smoking.

Given that recreational marijuana is now legal in Michigan, employers should review their policies and procedures, especially their drug testing and substance abuse policies. Employers should also ensure that managers and supervisors are trained to recognize impairment. Contact your Vorys lawyer if you have questions about marijuana in the workplace.