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Labor and Employment Alert: Vermont Legalizes Recreational Marijuana

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Effective July 1, 2018, adults who are 21 years and older will be allowed to cultivate, possess and consume marijuana in Vermont. Vermont is now the ninth state (along with Colorado, Washington, Oregon, Alaska, Nevada, California, Massachusetts and Maine) to “legalize” recreational marijuana use. Marijuana use and possession, however, remains illegal under federal law.

Unlike other states where marijuana legalization was initiated by ballot measures, Vermont’s recreational marijuana law was enacted by the state legislature. The law does not create a retail market for the sale of recreational marijuana. Instead, the law decriminalizes the possession of one ounce or less of marijuana and allows adults to grow up to two mature and four immature plants.

The law does not permit a person to use or be under the influence of marijuana while operating a motor vehicle. Additionally, the law does not prohibit landlords from banning the possession or use of marijuana in a lease agreement. The law does not distinguish between commercial and residential landlords, and so the owner of commercial property presumably could prohibit a tenant from allowing its employees from possessing or using marijuana while on the premises. Marijuana may not be consumed in any “public place,” which includes streets, alleys, parks, sidewalks, public buildings, places of public accommodation (such as schools, restaurants, and stores) and any place where the use or possession of tobacco is prohibited.

Importantly, specific protections are also afforded to employers under the law: (1) employers are not required to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace; (2) employers may adopt a policy that prohibits the use of marijuana in the workplace; and (3) employers may prohibit or otherwise regulate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana on its premises. The law does not create a cause of action against an employer that discharges an employee for violating a policy that restricts or prohibits the use of marijuana by employees.

Marijuana “legalization” efforts at the state level are expected to continue in 2018, with both New Jersey and Rhode Island expected to consider permitting recreational marijuana. Meanwhile, the U.S. Attorney General is overtly hostile to both medical and recreational marijuana legalization, and it is unclear what effect this will have on current or future efforts. Contact your Vorys lawyer if you have questions about marijuana legalization and its impact on your business.