

## Publications

### *Labor and Employment: Maine Delays Most of Its New Recreational Marijuana Law Until February 2018*

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#### **CLIENT ALERT** | 4.13.2017

In November 2016, Maine voters (by just 50.17%) approved the state's Marijuana Legalization Act. The law became effective on January 30, 2017, and allows individuals over the age of 21 to possess and use up to 2.5 ounces of marijuana and grow up to six flowering and 12 immature marijuana plants at home for recreational use (Maine already permits the medical use of marijuana).

The law does not require an employer to permit or accommodate the use, consumption, possession, trade, display, transportation, sale or growing of marijuana in the workplace. Nor does it affect the ability of employers to enact and enforce workplace policies restricting the use of marijuana by employees or to discipline employees who are under the influence of marijuana in the workplace.

However, the law specifically prohibits a school, employer or landlord from refusing to enroll, employ, lease to or otherwise penalize a person 21 years of age or older solely for that person's consuming recreational marijuana "outside of the school's, employer's or landlord's property." This anti-discrimination provision raises issues for employers who conduct drug tests of applicants or employees because a drug test will not disclose whether a person used marijuana at work or on the employer's premises. And it is unclear how employers will reconcile this protection with their authorization to restrict the use of marijuana in their workplaces and to discipline employees who are under the influence of marijuana at work.

Before the Marijuana Legalization Act could take effect, the Maine legislature enacted emergency legislation to delay implementation of key parts of the law. Of particular importance to employers is that the emergency legislation delays the anti-discrimination provision until February 1, 2018. Moreover, until that time, the law also prohibits possessing any edible retail marijuana products (except for those used for medical purposes) and consuming marijuana in nonpublic places. A person is still prohibited from smoking marijuana where smoking tobacco products is prohibited as well as from smoking marijuana in public.

The emergency legislation does not delay – and so these are effective now – the following provisions relating to recreational marijuana use:

- A person 21 years of age or older may use, possess, or transport up to 2 1/2 ounces of marijuana;
- A person 21 years of age or older may transfer, without remuneration, up to 2 1/2 ounces of marijuana and up to 6 immature plants or seedlings to a person who is 21 years of age or older;
- A person 21 years of age or older may possess, grow, cultivate, or transport up to 6 flowering marijuana plants, 12 immature plants and unlimited seedlings, and possess all of the marijuana produced by the plants at the person's residence; and
- A person 21 years of age or older may consume marijuana in a private residence.

The law further clarifies that possessing a useable amount of marijuana by a juvenile is a crime, unless that juvenile is authorized to possess marijuana for medical use.

While adults may still possess, use, and grow marijuana legally, retail sales of marijuana will not occur until February 1, 2018, at the earliest. Until then, the legislature will consider regulations to implement the law's retail sale provisions and, possible, to assist employers in navigating the haze of employee protections and employer rights. Contact your Vorys lawyer if you have questions about marijuana use in the workplace.