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New Mexico Legalizes Recreational Cannabis

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On April 1, 2021, New Mexico became the seventeenth state to legalize adult use or recreational cannabis for those 21 and older. New York just legalized recreational cannabis on March 31 (see our alert on this law [here](#)). Cannabis use and possession – whether for recreational or medical use – still remains illegal under federal law.

The New Mexico Cannabis Regulation Act (CRA) decriminalizes possession and use of cannabis and establishes a regulatory, taxing, and licensing system for commercial production and sales. Commercial sales of cannabis would begin no later than April 1, 2022.

Of particular importance to employers, nothing in the CRA:

- Restricts an employer's ability to prohibit or take an adverse employment action against an employee for impairment by or possession or use of intoxicating substances at work or during work hours. An "adverse employment action" means refusing to hire or employ a person; barring or discharging a person from employment; requiring a person to retire from employment; or discriminating against an employee in compensation or in terms, conditions or privileges of employment.
- Requires an employer to commit any act that would cause the employer to be noncompliant with or in violation of federal law or federal regulations or that would result in the loss of a federal contract or federal funding.
- Prevents or infringes upon the rights of an employer to adopt and implement a written zero-tolerance policy regarding the use of cannabis products. A zero-tolerance policy may permit the discipline or termination of an employee on the basis of a positive drug test that indicates any amount of delta-9-tetrahydrocannabinol or delta-9-tetrahydrocannabinol metabolite.

And, more broadly, the CRA does not restrict the ability of a person to prohibit conduct otherwise allowed in the CRA on the person's privately owned property. Nor does the CRA allow a person to smoke cannabis products in a public place, except in a cannabis consumption area.

Finally, the CRA does not apply to employees who are subject to the provisions of the federal Railway Labor Act or interfere with a collective bargaining agreement.

Employers with New Mexico operations should review their policies and procedures – especially substance abuse/drug testing and workplace conduct policies – to ensure they account for legalized recreational cannabis. We expect to see additional states legalize cannabis, both recreational and medical, in 2021, as well as increasing lawsuits brought by applicants and employees as the tension between state-legalized use continues to conflict with federal prohibitions. Contact your Vorys lawyer if you have questions about cannabis legalization and its effect on your workplace.