

Publications

Virginia Legalizes Recreational Cannabis and Enacts Employment Protections For Medical Cannabis Users

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CLIENT ALERT | 4.23.2021

Virginia recently joined New Mexico ([see more](#)) and New York ([see more](#)) in legalizing recreational or adult use and possession of marijuana (which is still prohibited under federal law). Virginia also expanded its medical cannabis law by adopting employee non-discrimination provisions. Employers should review their policies and procedures regarding hiring, employee conduct, and drug testing to account for these developments. Contact your Vorys lawyer if you have questions about cannabis legalization in jurisdictions where you operate and its impact on your workplace policies.

Recreational marijuana legalization

Effective July 1, 2021, it will be legal for adults who are 21 and older to possess and use marijuana in the Commonwealth of Virginia. Adults can possess up to one ounce of marijuana and can home-grow up to four plants. Virginia will have retail sales of marijuana by July 1, 2024.

Adults may possess marijuana in public places. However, it remains unlawful to consume marijuana or a marijuana product in a public place. It also remains unlawful to use or consume marijuana while driving a motor vehicle upon a public highway or while being a passenger in that vehicle. The law does not include any specific protections for employees or any express recitation of employer rights, such as maintaining a drug-free workplace.

The law provides for an automatic expungement process for those convicted of certain marijuana-related crimes to have such crimes automatically expunged by July 1, 2026.

The Virginia Cannabis Control Authority will issue retail marijuana store licenses. A license may be suspended or revoked if the licensee has refused to (1) remain neutral regarding any union organizing efforts by employees, including card check recognition and union access to employees; (2) pay employees prevailing wages as determined by the U.S. Department of Labor; or (3) classify no more than 10% of its workers as independent contractors and such workers are not owners in a

worker-owned cooperative.

Medical cannabis employment protections

Effective July 1, 2021, employers in Virginia are prohibited from discharging, disciplining, or discriminating against an employee because of the employee's lawful use of "cannabis oil" in accordance with Virginia's medical marijuana program. Cannabis oil is any formulation of processed Cannabis plant extract or a dilution of the resin of the Cannabis plant that contains at least 5 milligrams of cannabidiol (CBD) or tetrahydrocannabinolic acid (THC-A) and no more than 10 milligrams of delta-9-tetrahydrocannabinol per dose.

However, these prohibitions do not (1) restrict an employer's ability to take any adverse employment action for any work impairment caused by the use of cannabis oil or to prohibit possession during work hours, (2) require an employer to commit any act that would cause the employer to be in violation of federal law or that would result in the loss of a federal contract or federal funding, or (3) require any defense industrial base sector employer or prospective employer to hire or retain any applicant or employee who tests positive for THC in excess of 50 nanograms per milliliter for a urine test or 10 picograms per milliliter for a hair test.

Virginia also recently amended its medical marijuana laws to permit the use of "botanical cannabis" (cannabis composed wholly of usable cannabis from the same parts of the same plant) in addition to the cannabis oil. However, the employee protections described above appear to apply only to employees who are using or possessing cannabis oil. As a practical matter, however, a drug test will not distinguish between botanical cannabis and cannabis oil. Therefore, employers should consider the employment protections to apply to any medical use of cannabis regardless of its source.