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Labor and Employment Alert: Missouri Legalizes Medical Marijuana

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On November 6, 2018, Missouri's Medical Marijuana and Veteran Healthcare Services Initiative was adopted as an amendment to the state's constitution by 65% of the voters. Missouri now joins 32 other states and the District of Columbia in legalizing medical marijuana. Utah also legalized medical marijuana on Election Day, and Michigan voters **approved recreational marijuana**. Marijuana use and possession (whether recreational or medical) still remains illegal under federal law.

Missouri's initiative is intended to permit state-licensed physicians to recommend marijuana for medical purposes to patients with serious illnesses and medical conditions and to allow patients with qualifying medical conditions the right to use medical marijuana for treatment under their physician's supervision. The amendment becomes effective on December 6, 2018.

The initiative establishes a medical marijuana regulatory system that authorizes not less than 24 marijuana dispensaries in each of the state's eight congressional districts. The Missouri Department of Health and Senior Services will oversee and regulate the medical marijuana program. The department will begin accepting applications for qualifying patients by June 4, 2019, and applications for dispensaries by August 3, 2019.

Under the Initiative, a person is not permitted to (1) consume marijuana for medical use in a jail or correctional facility; (2) undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice; (3) operate, navigate, or be in actual physical control of any dangerous device or motor vehicle, aircraft, or motorboat while under the influence of marijuana; (4) consume marijuana for medical use in a public place, unless otherwise provided by law. A person is not permitted to bring a claim against an employer, former employer, or prospective employer for wrongful discharge, discrimination, or any similar cause of action or remedy, based on the employer prohibiting him or her from being under the influence of marijuana while at work or disciplining or terminating the employee or former employee for working or attempting to work while under the influence of marijuana.

A physician or healthcare provider is not subject to criminal or civil liability, sanctions under Missouri law, or professional discipline for owning, operating, investing in, being employed by, or contracting with any licensed or certified medical marijuana entity or issuing a physician certification to a patient diagnosed with a qualifying medical condition in a manner consistent with the constitutional medical marijuana provisions and legal standards of professional conduct. A health care provider is also not subject to mandatory reporting requirements for the medical use of marijuana by non-emancipated qualifying patients under 18 years of age in a manner consistent with the constitutional medical marijuana provisions and with consent of a parent or guardian.

Finally, the initiative proclaims the state's public policy that contracts related to marijuana for medical use entered into by qualifying patients, primary caregivers, medical marijuana testing facilities, cultivation facilities, marijuana-infused products manufacturing facilities, or dispensary facilities and those who allow property to be used by those entities, should be enforceable. No such contract is unenforceable on the basis that activities related to medical marijuana may be prohibited by federal law.

Given that medical marijuana is now legal in Missouri, 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.