

Publications

O-HI(gh)-O: The Buckeye State Legalizes Adult Use Cannabis

Related Attorneys

Michael C. Griffaton

Related Services

Employment Counseling

Labor and Employment

Related Industries

Cannabis, Hemp and CBD

CLIENT ALERT | 11.8.2023

On November 7, 2023, Ohio became the twenty-fourth state to legalize adult use (recreational) cannabis. Issue 2, a citizen-initiated statute, passed with about 57% of the vote. By comparison, a similar effort to legalize adult use cannabis in 2015 was rejected by 63% of Ohio voters. Issue 2 becomes effective in 30 days.

Issue 2 permits adults over the age of 21 to buy from a state-licensed source and possess up to 2.5 ounces of cannabis and to grow cannabis at home. The law also establishes the Division of Cannabis Control within the Department of Commerce, which will regulate and license where cannabis can be commercially cultivated, tested, and sold. It is expected that the regulatory scheme will not be established until 2024. Marijuana sales will be taxed at 10%, with the revenue directed toward a cannabis social equity and jobs program.

Importantly for employers, Issue 2 protects employers' ability to manage their workplaces and employees similar to the employer protections in the Ohio Medical Marijuana Law. This means:

- An employer is *not* required to permit or accommodate employees' use, possession, or distribution of cannabis.
- An employer may refuse to hire and may discharge, discipline, or take other adverse employment action against a person because they use, possess, or distribute cannabis.
- A person may not sue an employer for refusing to hire or for discharging, disciplining, discriminating, retaliating, or otherwise taking adverse employment action against them related to their cannabis use.
- An employer may establish and enforce a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy.
- The Ohio Bureau of Workers' Compensation may continue to grant rebates or discounts on premium rates to employers participating in the Bureau's drug-free workplace program.
- A person who is terminated because they used cannabis is considered to have been discharged for "just cause" under the

Unemployment Compensation Law if that use violated an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy. This means the person will be ineligible to serve a waiting week or receive unemployment benefits for the duration of the unemployment.

- Issue 2 does not interfere with any federal restrictions on employment, including U.S. Department of Transportation regulations.

Because Issue 2 is an initiated statute rather than a constitutional amendment, the General Assembly has the power to amend it. According to news reports, Senate President Matt Huffman indicated that “the General Assembly may consider amending the statute to clarify language regarding limits for THC and tax rates as well as other parts of the statute.” It remains to be seen what, if anything, the General Assembly does in this regard.

Contact your Vorys lawyer if you have questions about Issue 2 or workplace drug testing policies.