

Maine's New Recreational Marijuana Law Permits Employers to Enforce Policies Restricting Use

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Maine's new recreational marijuana law permits employers to enforce workplace policies restricting the use of marijuana and to take disciplinary action in accordance with those workplace policies.

The new law, which took effect on May 2, 2018, replaced one that had been the subject of controversy, particularly with regard to certain employer-related provisions.

Background

Certain provisions of Maine's original recreational marijuana law took effect on February 1, 2018. Among other things, the law prohibited employers from refusing to employ a person who used marijuana outside of the employer's property. That language, in effect, would bar employers from refusing to hire an applicant who tested positive for marijuana. (For more on the old law, see our article, [Maine Recreational Marijuana Law Limits Drug Testing, Disciplinary Consequences Imposed by Employers.](#))

New Law

Emergency legislation enacted by the Maine legislature was vetoed by the Governor, but the legislature overrode the veto. LD 1719, "An Act to Implement a Regulatory Structure for Adult Use Marijuana," which took effect on May 2, 2018, provides that, except as otherwise provided in the Maine Medical Use of Marijuana Act:

1. *Marijuana in workplace.* An employer is not required to permit or accommodate the use, consumption, possession, trade, display, transportation, sale, or cultivation of marijuana or marijuana products in the workplace;
2. *Workplace policies regarding marijuana use.* An employer may enact and enforce workplace policies restricting the use of marijuana and marijuana products by employees in the workplace or while otherwise engaged in activities within the course and scope of employment; and
3. *Discipline of employees.* An employer may discipline employees who are under the influence of marijuana in the workplace or while otherwise engaged in activities within the course and scope of employment in accordance with the employer's workplace policies regarding the use of marijuana and marijuana products by employees.

The new law removes the prior law's prohibition on employers taking disciplinary action for marijuana use away from the employer's premises.

Maine's drug testing law requires employer drug testing policies to be approved by the Maine Bureau of Labor Standards (with some limited exceptions). The Bureau's model drug testing policies still include testing for marijuana and permit disciplinary action for positive test results.

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Impact on Employers

Employers that conduct drug testing in Maine should review their drug and alcohol testing policies (again) to consider whether they wish to make any changes to address the new Maine recreational marijuana law. Jackson Lewis attorneys are available to assist employers with this and other workplace issues.