

Oklahoma Voters Pass Broad Medical Marijuana Law with Workplace Anti-Discrimination Provisions

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Oklahoma became the 30th state to pass a medical marijuana law. Voters approved the measure on June 26, 2018.

The new law gives physicians broad discretion to prescribe medical marijuana, which should make it fairly easy to obtain. Additionally, it restricts employers from taking action against applicants or employees *solely* based on their status as a medical marijuana license holder or due to a positive drug test result. The new law takes effect on July 26, 2018.

Oklahoma medical marijuana license holders will be permitted to legally possess up to three ounces of marijuana on their person and up to eight ounces in their residence (as well as specified amounts of edible marijuana, concentrated marijuana, and plants). The new law permits the issuance of a license to applicants 18 years or older, but it also allows applicants under the age of 18 to obtain a license under certain circumstances.

The new law will be implemented quickly. It directs the Oklahoma State Department of Health to make available on its website applications for medical marijuana licenses/caregiver licenses, dispensary licenses, commercial grower licenses, and processing licenses by July 26, 2018. It also requires the Oklahoma State Department of Health to establish a regulatory office to receive these applications by August 25, 2018. Applications are to be approved or denied within 14 days of receipt.

A medical marijuana license will be valid for two years. Temporary licenses, valid for 30 days, also may be requested.

No “Qualifying Medical Conditions” Specified

A medical marijuana license application must be signed by an Oklahoma Board-certified physician. However, unlike most other state medical marijuana laws, there are no “qualifying medical conditions” required to make a patient eligible for medical marijuana use. Rather, the license must be recommended “according to the accepted standards a reasonable and prudent physician would follow when recommending or approving any medication.”

Oklahoma Governor Mary Fallin stated after the election results were clear that the new law “is written so loosely that it opens the door for basically recreational marijuana.” Prior to the election, Fallin stated that she planned on calling a special session of the legislature if voters passed the measure.

Implications for Employers

The new law protects medical marijuana license holders against discrimination in the workplace. Absent the “imminent” loss of a monetary or licensing-related benefit under

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federal law or regulations, an employer may *not* discriminate against a person in the hiring, termination, or other term or condition of employment based on the individual's status as a medical marijuana license holder. Employers may take action against a holder of a medical marijuana license if the holder uses or possesses marijuana while in the holder's place of employment or during the hours of employment.

Finally, employers may *not* take action against the holder of a medical marijuana license solely based upon the status of the employee as a medical marijuana license holder or the results of a drug test showing positive for marijuana or its components.

Despite the proliferation of state marijuana laws, marijuana remains a Schedule I drug under the federal Controlled Substances Act. The drug's Schedule I status means it is illegal under federal law, regardless of state law to the contrary. (See our article, [U.S. Department of Justice Reverses Hands-Off Enforcement Policy on Marijuana.](#))

The fact that marijuana is illegal under federal law, but legal under certain state laws, continues to challenge employers, especially those who operate in multiple states.

In addition to updating their drug testing policies, employers in Oklahoma should consult with counsel regarding the implications of this new medical marijuana law on their particular situations.

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