

Issue 2 Passed: What Does it Mean for Ohio Employers?

On November 7, 2023, Ohio voted “Yes” on Issue 2 to legalize and regulate marijuana use for adult recreational use.

What Employers Need to Know:

- Both public and private employers are still able to establish and enforce their own rules regarding marijuana use and testing.
- Employers are not required to hire marijuana users and can still discipline employees for positive drug screens.
- Ohio employers subject to federal Department of Transportation requirements and laws governing federal government contracts will also continue to be permitted to drug test employees pursuant to those federal requirements.
- Ohio employers will also be able to maintain voluntary Drug-Free Safety Programs through the Ohio BWC.
- Some employers in states with both medical and recreational marijuana programs have chosen to continue drug testing programs, however, omit the panel that tests for marijuana.

Ohio Issue 2, verbatim, states the following related to employers:

Section 3780.35. Rights of employer.

(A) Nothing in this chapter does any of the following:

1. Requires an employer to permit or accommodate an employee’s use, possession, or distribution of adult-use cannabis otherwise in compliance with

this chapter;

2. Prohibits an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against an individual with respect to hire, tenure, terms, conditions, or privileges of employment because of that individual's use, possession, or distribution of cannabis otherwise in compliance with this chapter;
3. Prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy;
4. Interferes with any federal restrictions on employment, including the regulations adopted by the United States Department of Transportation in Title 49 of the Code of Federal Regulations, as amended;
5. Permits an individual to commence a cause of action against an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against an individual with respect to hire, tenure, terms, conditions, or privileges of employment related to the individual's use of cannabis; or
6. Affects the authority of the administrator of workers' compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program established in accordance with rules adopted by the administrator under Chapter 4123 of the Revised Code.

(B) An individual who is discharged from employment because of that individual's use of cannabis shall be considered to have been discharged for just cause for purposes of division (D) of section 4141.29 of the Revised Code if the individual's use of cannabis was in violation of an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of cannabis.

Source: *Bricker Graydon LLP*

ERC Member Poll:

Effect of Marijuana Legalization on Workplace Practices

In August 2023, ERC polled members and found that 69% of responding employers included marijuana/THC in their drug testing panel at the time of the survey, while 9% were already in the process of removing it.

Employers should ensure their drug policies are consistent with state and federal law, communicate the policies to employees, and apply them consistently.



Access Report

Consult with your legal counsel to determine what actions can and cannot be taken as emerging information unfolds related to marijuana and the workplace.

Additional Resources:

- [Fisher Phillips: Puff, Puff, Passed: A 6-Step Plan for Ohio Employers as Recreational Marijuana Legalized](#)
 - [Ohio Legalizes Recreational Marijuana, But Employers' Ability to Enforce Workplace Drug Policies Remains Intact \(US\)](#)
-



Please reach out to me or the Help Desk if you have any questions. We're happy to help!

Sincerely,

Susan Chermonte
Membership Manager & HR Consultant

schermonte@yourERC.com

Follow ERC on Social Media:



ERC, 387 Golf View Lane, Suite 100, Highland Heights, OH 44143

[Unsubscribe](#) [Manage preferences](#)