

Labor & Employment Law Alert: What Employers Must Know About the Marijuana Regulation and Taxation Act

On March 31, 2021 Governor Cuomo signed into law the Marijuana Regulation and Taxation Act (the “Act”), which legalizes the use of recreational marijuana in New York State for individuals 21 years old and older. Although the Act has many complexities and impacts individuals, businesses and local governments in various ways, there are specific provisions that employers should be aware of concerning the legalization of recreational marijuana in New York State.

Many employers understandably are concerned about the impact the legalization of recreational marijuana may have on their workplaces. The Act amends Section 201-d of the New York State Labor Law, which prohibits discrimination based on an employee engaging in certain activities. The new amendments make it unlawful for an employer to refuse to hire an individual or otherwise discriminate against an employee as a result of that person’s lawful use of recreational marijuana before or after the employee’s work hours, off the employer’s premises and without the use of the employer’s equipment. In other words, an employer in New York State may not refuse to hire an applicant, or discipline or terminate an employee, because that individual lawfully consumed marijuana outside of the workplace during non-work hours without use of the employer’s equipment and the consumption of marijuana did not impact his or her ability to perform necessary job duties.

However, the Act ensures that employers are not required to tolerate the use of recreational marijuana under certain circumstances. The legislation makes clear that an employer would not violate Section 201-d of the New York State Labor Law by taking adverse employment action based on an individual’s use of recreational marijuana if:

1. the employer’s actions were required by New York State or federal law, regulation, ordinance, or any other New York State or federal governmental mandate; or
2. the employee is impaired by the use of marijuana, meaning the employee exhibits “specific articulable symptoms” while working that decrease the employee’s performance of his or her job duties, “or such specific articulable symptoms interfere with an employer’s obligation to provide a safe and healthy workplace”; or
3. the employer’s actions would require it to commit an action that would cause it to be in violation of federal law or would result in the loss of a federal contract or federal funding.

The Act further states that it is not intended to limit the ability of an employer to create and enforce policies pertaining to marijuana use in the workplace and ensures that employers can prohibit smoking marijuana where smoking tobacco is prohibited.

The legislation also amends provisions of the Public Health Law concerning medical marijuana. The Act expands the list of qualifying conditions for an individual to be eligible to use medical marijuana and permits a certified patient to access a sixty-day supply of medical marijuana, versus a thirty-day

supply. Further, it increases the number of caregivers allowed per certified patient.

Finally, the Act establishes automatic expungement or resentencing for individuals convicted of a marijuana related offense that would no longer be illegal under the Act.

As employers navigate these issues, our Firm's **labor and employment** attorneys are standing by to provide legal advice.
