LEGALIZATION OF CANNABIS IN ILLINOIS: WHAT EMPLOYERS NEED TO KNOW

Presented by Justin Schooley and Darcy Proctor to The American Society of Safety Professionals – Northeastern Illinois Chapter on February 21, 2020

WHAT CAN EMPLOYERS DO UNDER THIS LEGISLATION?

1. Employers may ban the use of cannabis at the workplace.
2. Employers may ban the use of cannabis while on-call, so long as the employee is scheduled with at least 24 hours notice to be on “stand by.”
3. Employers may forbid employees from arriving to work under the influence of cannabis or using cannabis while performing job duties or while on-call.
4. Employers may discipline or discharge employees if the employer possesses a “good faith” belief that the employee is under the influence of cannabis while at work, on-call, or performing job duties.
5. Employers may administer drug tests to employees, however, the employer must, on a “good faith” basis, believe that the employee used or was under the influence of cannabis while working, performing job duties, or on-call.
6. Employers must allow employees an opportunity to contest the basis for the employer’s determination that the employee was under the influence or “impaired” by cannabis.

The Act states that an employer may consider an employee to be impaired or under the influence of cannabis if the employer has a “good faith” belief that the employee manifests specific, articulable symptoms while working that decrease or lessen the employee’s performance of the duties or tasks of the employee’s job position, including an employee’s symptoms of the following:

- Speech
- Physical dexterity
- Agility
- Coordination,
- Demeanor
- Irrational or unusual behavior
- Negligence or carelessness in operating equipment or machinery
- Disregard for the safety of the employee or others
- Involvement in any accident that results in serious damage to equipment or property;
- Disruption of a production or manufacturing process; or
- Carelessness that results in any injury to the employee or others.
BEST PRACTICES FOR EMPLOYERS

• Employers should revisit their drug testing policies to ensure they are in conformance with the Cannabis Act. Under the Act, the policy can require that: (1) employees cannot come to work under the influence of cannabis; (2) employees cannot use cannabis products during work hours; and (3) employees may be required to submit to a drug test if he or she exhibits behaviors consistent with being under the influence.

• Employers should ensure that supervisors are well-trained and capable of identifying cannabis-related impairment signs and procedures to follow as a result. This training is critical to establishing an employer’s “good faith belief” that the employee was impaired on the job to support disciplinary action. Again, the Act provides specific symptoms to look for when making a determination that an employee is “impaired” of “under the influence” of cannabis.

• The Act requires that employees be given a reasonable opportunity to contest the basis of a disciplinary decision for being impaired or under the influence on the job. As such, employers should establish a written procedure for employees to contest a cannabis-based disciplinary decision. A written procedure will help employers establish employees were provided this opportunity.

• Employers should clearly communicate any drug policy changes to employees and document that the employees acknowledged and understood the contents of such policy.

Justin T. Schooley
Wiedner & McAuliffe, Ltd.
One North Franklin, Suite 1900
Chicago, IL 60606
Telephone: 312-596-4978
jtschooley@wmlaw.com

Darcy L. Proctor
Wiedner & McAuliffe, Ltd.
One North Franklin, Suite 1900
Chicago, IL 60606
Telephone: 312-596-4955
dlproctor@wmlaw.com