Kentucky's New Medical Marijuana Law: What Employers Need to Know (and Do)

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Kentucky Governor Andy Beshear recently signed Senate Bill 47 into law, legalizing medical marijuana in Kentucky.* Starting in 2025, Kentuckians will be able to apply for a medical marijuana card after obtaining a written certification from their medical practitioner showing a qualified medical condition. Those conditions are as follows:

- Any type or form of cancer regardless of stage;
- Chronic, severe, intractable, or debilitating pain;
- Epilepsy or any other intractable seizure disorder;
- Multiple sclerosis, muscle spasms, or spasticity;
- Chronic nausea or cyclical vomiting syndrome that has proven resistant to other conventional medical treatments;
- Post-traumatic stress disorder; and
- Any other medical condition or disease for which the Kentucky Center for Cannabis established in KRS 164.983, or its successor, determines that sufficient scientific data and evidence exists to demonstrate that an individual diagnosed with that condition or disease is likely to receive medical, therapeutic, or palliative benefits from the use of medicinal cannabis.

*Note: Medical marijuana remains illegal under federal law, and therefore a Kentucky employer subject to the federal Drug-Free Workplace Act must continue to prohibit employee medical marijuana use accordingly to avoid consequences thereunder.

How This New Law Will Impact Employers in Kentucky

While the new law may legalize medical marijuana, employers will have substantial legal safeguards allowing them to restrict the use

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of medical marijuana in the workplace. Specifically, employers may:

- Prohibit an employee who is a registered qualified medical marijuana cardholder from using equipment, machinery, or power tools if the employer believes such use poses an unreasonable safety risk.
    - The law also restricts cardholders from consuming medical cannabis or being under the influence when performing certain tasks (e.g., operating, navigating or being in control of a common carrier aircraft, vehicle, vessel or other machine-powered device).

- Continue to operate as a drug-free workplace and prohibit medical marijuana usage through reasonable detection and enforcement.
    - Employers will be permitted to perform marijuana drug testing and act in accordance with test results. Indeed, employers can test employees in "good faith" to determine whether the cardholder has worked while impaired. This determination requires a behavioral assessment for impairment and a test to find the presence of marijuana through established methods. If an employer determines that a cardholder employee is impaired by cannabis use based on a behavioral impairment assessment and a cannabis test as a secondary step, the burden of proving non-impairment will shift to the employee to refute.

- Rely upon the new statute as a shield against lawsuits and unemployment benefit costs.
    - Notably, employees do not have the right to make a claim against their employer for wrongful discharge or discrimination when the adverse action is premised upon cannabis misuse.
    - An employee who is discharged from employment for consuming medical marijuana, working while under the influence of the same, or testing positive for a controlled substance will be ineligible for unemployment if such

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actions are in violation of an employment contract or established personnel policy.

Recommended Next Steps

Although the law does not go into effect until January 1, 2025, Kentucky employers should proactively review the law and their policies, including drug testing policies, to determine whether any revisions to existing policies or other employment documentation are necessary.

If you have any questions about this new legislation or other employment law issues, please contact the authors of this article or any attorney in Frost Brown Todd's Labor and Employment practice group.

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