

MICKES O'TOOLE, LLC

ATTORNEYS AT LAW

Medical Marijuana: The Highlights

By: Anne Kerns
Mickes O'Toole, LLC

Medical marijuana is now legal in Missouri. What exactly this means for employers remains fuzzy. This article discusses the Missouri Amendment legalizing medical marijuana, provides a brief primer on the cannabis plant and looks at potential issues with the legalization of medical marijuana.

Amendment 2

In November 2018, Missouri voters approved Amendment 2, a constitutional amendment legalizing medical marijuana in the state. The Amendment permits state-licensed physicians to recommend marijuana to patients. Qualifying patients who have approval from their physician will receive identification cards from the state that will allow them or their registered caregivers to grow up to six marijuana plants or purchase at least four ounces of marijuana from dispensaries on a monthly basis.

So who is as a qualifying patient? A “qualifying patient” is defined as a Missouri resident with at least one qualifying medical condition. A “qualifying medical condition” is defined as one of the following: cancer, epilepsy, glaucoma, intractable migraines unresponsive to other treatment, a chronic medical condition that causes severe, persistent pain or persistent muscle spasms, psychiatric disorders, HIV or AIDS, a chronic medical condition that is normally treated with a prescription medicine that could lead to dependence, terminal illness, any other chronic or debilitating medical condition.

The Missouri Department of Health and Senior Services (“DHSS”) is tasked with implementing the provisions of the Missouri constitution legalizing medical marijuana. At the end of May, the DHSS finalized the rules for Missouri’s state medical marijuana program. The DHSS came out with eleven regulations outlining the facility application process, which patients will qualify and regulations for growers and dispensaries, among other regulations. On July 4, 2019, the DHSS will start accepting applications for identification cards, and on August 3, 2019 will start accepting facility license applications. The deadline for approval of the facility license applications is December 31, 2019. With this timeline and other restrictions, it is likely that Missouri dispensaries will not be fully functional until the spring of 2020 or later. So while medical marijuana may not present you with an issue tomorrow, it very well could sometime in the upcoming school year.

MICKES
O'TOOLE, LLC
ATTORNEYS AT LAW

MICKES O'TOOLE, LLC

ATTORNEYS AT LAW

Cannabis Primer

A cannabis plant may not be as simple as once imagined. Cannabis had two strains: hemp and marijuana. A cannabis plant contains cannabinoids, the two most prominent being tetrahydrocannabinol (THC) and cannabidiol (CBD). THC is the main compound found in marijuana and is the primary agent responsible for creating the “high” associated with recreational cannabis use. CBD is found in the hemp plant and creates no psychoactive effects.

CBD products include oils, capsules and edibles. CBD products extracted from industrial hemp are being legally sold in Missouri and most other states. Industrial hemp is a type of cannabis, defined as having THC of 0.3% or less. Marijuana is still illegal under federal law and is classified as a Schedule I drug.

Medical Marijuana, Employees, Students

With the legalization of medical marijuana in Missouri and the ever increasing availability of CBD products, school districts are going to be faced with questions as to how to deal with these issues as they related to employees and students.

As an initial matter, an employer does not have to let its employees work under the influence of marijuana, simply because medical marijuana is legal. An employer can continue to follow its policies related to drug testing. All that being said, if an employee tests positive for marijuana, it may not be definitive proof that the employee was “under the influence” at work. For example, an employee could be using CBD oil containing trace amounts of THC resulting in a positive test or could be legally using medical marijuana while not at work.

Another question involving employees that may come up is whether or not medical marijuana use is a reasonable accommodation under the Missouri Human Rights Act (“MHRA”). The Missouri Constitution is silent on the issue of accommodation making the answer to this question unclear. If this question arises, an employer must always remember that the interactive process required under the MHRA is individualized and there may not be a one-size-fits-all answer.

With regard to students, a district may be faced with the issue of whether a student who is a Qualifying Patient under Amendment 2 must be allowed to possess and administer medical marijuana on the district’s campus. That question remains open, with some discretion afforded to districts. Under federal law, marijuana (medical or otherwise) remains illegal and possession of the drug in a school zone violates federal law. The federal government, however, has currently agreed to refrain from taking steps to interfere with state medical marijuana laws. Under Missouri law, it appears school districts may have the discretionary authority to decide for themselves whether to allow or prohibit the limited administration of medical marijuana to students on campus. As Amendment 2 is further implemented over the next few years, school

MICKES O'TOOLE, LLC

ATTORNEYS AT LAW

districts should keep an eye on both federal and state legislatures to see if more concrete guidance on this issue comes out.

The landscape of the legalization of medical and recreational marijuana is ever changing. Missouri law legalizing medical marijuana and what that fully means for employers remains to be seen. For now, the best advice for any employer is to stay current and understand the laws being passed related to legalization of marijuana because ignoring this new reality is a recipe for disaster.