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Labor and Employment Alert: Oklahoma Becomes the 30th State to Legalize Medical Marijuana

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On June 26, 2018, voters in Oklahoma approved a ballot initiative to legalize medical marijuana (which remains illegal under federal law). The law becomes effective on July 26, 2018, giving the state a month to implement seller, grower, packaging, transportation, research, and caregiver licenses and other requirements. The law permits physicians to recommend marijuana for any condition and prohibits from discriminating against medical marijuana users.

Under the new law, applicants for a medical marijuana license must be 18 years or older. The law permits a minor to apply if the application is signed by two physicians and a parent or legal guardian.

Applications for a medical marijuana license must be signed by an Oklahoma board-certified physician. Unlike in other states, there are no qualifying conditions that an individual must have before obtaining medical marijuana. Instead, “a medical marijuana license must be recommended according to the accepted standards a reasonable and prudent physician would follow when recommending or approving any medication.” The law provides that no physician “may be unduly stigmatized or harassed” for signing a medical marijuana license application.

Employers are generally prohibited from discriminating against medical marijuana license holders. The law provides that, “unless a failure to do so would cause an employer to imminently lose a monetary or licensing related benefit under federal law or regulations,” an employer may not discriminate against a person in hiring, termination or imposing any term or condition of employment, or otherwise penalize a person solely based upon the person's status as a medical marijuana license holder. Additionally, employers may not take action against the holder of a medical marijuana license solely based upon the results of a drug test showing positive for marijuana or its components. Employers may take action against a holder of a medical marijuana license holder if the holder uses or possesses marijuana while in the holder's place of employment or during the hours of employment.

Further, no school or landlord may refuse to enroll or lease to and may not otherwise penalize a person solely for his or her status as a medical marijuana license holder, unless failing to do so would imminently cause the school or landlord to lose a monetary or licensing related benefit under federal law or regulations. And no person holding a medical marijuana license may unduly be withheld from holding a state issued license by virtue of their being a medical marijuana license holder. According to the law, “this would include such things as a concealed carry permit.”

Finally, the new law protects “any device used for the consumption of medical marijuana.” These devices are deemed legal to be sold, manufactured, distributed and possessed. “No merchant, wholesaler, manufacturer, or individual may unduly be harassed or prosecuted for selling, manufacturing, or possession of medical marijuana paraphernalia.” It is unclear whether an employer can discipline an employee who possesses – but who does not use – medical marijuana paraphernalia at work.

According to Oklahoma Governor Mary Fallin, the law “is written so loosely that it opens the door for basically recreational marijuana.” It remains to be seen whether additional legislation or regulations will provide more guidance and clarity on the law. Contact your Vorys lawyer if you have questions about Oklahoma’s new medical marijuana law or about the medical and recreational marijuana laws in other states and their impact on your business.