The Legalization of Medical Marijuana and the Impact on the Workplace

Presented by Cassandra L. Manna
Before We Get Started . . .

• Three Rules
  – Supreme Court of Ohio Board of Professional Conduct Opinion 2016-6
    • “A lawyer may counsel or assist a client regarding conduct expressly permitted under Sub.H.B. 523 of the 131st General Assembly authorizing the use of marijuana for medical purposes and any state statutes, rules, orders, or other provisions implementing the act. In these circumstances, the lawyer shall also advise the client regarding related federal law.”
  – Opinions Regarding Medical Marijuana
  – “Medical Marijuana” Term
Ohio Revised Code 3796: Medical Marijuana
Legalization of Medical Marijuana: Agenda

- **Agenda**
  - Federal Law vs. State Law
  - What is Happening in Ohio
    - Regulation and Sales
    - Forms
    - Qualified Medical Conditions
    - Zoning
    - Reciprocity
  - Employment Concerns and Interests
    - Employers
    - Employees
  - The Law in the Future
Federal Law vs. State Law

**Federal Law**
- Currently Illegal
- Schedule I Drug
- U.S. Department of Justice
  - No prosecutions of those in compliance with State Law
    - True Under Obama
    - Extended Under Trump in September 2017

**State Law**
- 30 States have legalized Medical Marijuana
- 8 States have legalized Recreational Marijuana
What is Happening in Ohio – Regulation and Sales

Medical Marijuana Control Program

• Department of Commerce
  – Cultivators
  – Processors
  – Laboratories

• State Board of Pharmacy
  – Retail Dispensers
  – Caregivers
  – Patients

• State Medical Board
  – Physicians

Advisory Committee

• Pharmacist
• Pharmacist
• Physician
• Physician
• Local Law Enforcement Representative
• Employers Representative
• Labor Representative
• Mental Health Treatment Representative
• Nurse Representative
• Caregiver Representative
• Patient Representative
• Agriculture Representative
• Treatment of Drugs and Alcohol Addiction Representative
• Representative Engaged in Academic Research
What is Happening in Ohio – Regulation and Sales

• General Procedure

  Cultivation → Processing → Dispensing

  Testing

  → Caregivers

  → Patients

• Sales

  – $200 million - $400 million in 2 – 3 years (estimated)
What is Happening in Ohio – Regulation and Sales

• **Cultivator Licenses**
  – Applications Due June 2017
  – Licenses Awarded November 2017

• **Processor Licenses**
  – Applications Due ~ November or December 2017
  – Licenses Awarded ~ Spring 2018

• **Testing Laboratory Licenses**
  – Applications Due September 2017
  – Licenses Awarded ~ June 2018

• **Dispensary Licenses**
  – Applications Due November 2017
  – Licenses Awarded ~ Spring 2018
• **Smoking is prohibited!**

• **Allowable forms:**
  – Oils
  – Tinctures
  – Plant material
  – Edibles
  – Patches
  – Vaporization
  – Other approved by the State Board of Pharmacy
What is Happening in Ohio – Qualified Medical Conditions

- Acquired immune deficiency syndrome (AIDS)
- Alzheimer’s disease
- Amyotrophic lateral sclerosis
- Cancer
- Chronic traumatic encephalopathy
- Crohn’s disease
- Epilepsy or another seizure disorder
- Fibromyalgia
- Glaucoma
- Hepatitis C
- Inflammatory bowel disease
- Multiple sclerosis

- Pain that is either of the following:
  - Chronic and severe OR
  - Intractable
- Parkinson’s disease
- Positive status for HIV
- Post-traumatic stress disorder (PTSD)
- Sickle cell anemia
- Spinal cord disease or injury
- Tourette’s syndrome
- Traumatic brain injury
- Ulcerative colitis
- Other
What is Happening in Ohio - Zoning

Moratorium

- Akron
- Beavercreek
- Broadview Heights
- Canton Township
- Dover
- Fairview Park
- Hamilton
- Jackson Township
- Lake Township
- Lakewood
- Lawrence Township
- Piqua
- Plain Township
- Strongsville
- Sugarcreek
- Troy
What is Happening in Ohio – “Foreign” Prescriptions

• Reciprocity agreement requirements:
  – Patient and caregiver registration requirements are similar to Ohio’s registration requirements AND
  – The other state recognizes Ohio’s registered patients and caregivers

• If a reciprocity agreement has been entered into by the state of Ohio and another state, the other state’s prescriptions have the same force in Ohio as if the prescription was written in Ohio by an Ohio doctor.
Ohio Revised Code § 3796.28: Employment

- (A) Nothing in this chapter does any of the following:
  - (1) Requires an employer to permit or accommodate an employee’s use, possession, or distribution of medical marijuana;
  - (2) Prohibits an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person’s use, possession, or distribution of medical marijuana;
  - (3) Prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy;
  - (4) Interferes with any federal restrictions on employment, including the regulations adopted by the United States department of transportation in Title 49 of the Code of Federal Regulations, as amended;
  - (5) Permits a person to commence a cause of action against an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana;
  - (6) Affects the authority of the administrator of workers’ compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program established in accordance with rules adopted by the administrator under Chapter 4123. of the Revised Code.

- (B) A person who is discharged from employment because of that person’s use of medical marijuana shall be considered to have been discharged for just cause for purposes of division (D) of section 4141.29 of the Revised Code if the person’s use of medical marijuana was in violation of an employer’s drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of medical marijuana.
Business Concerns and Interests - Employers

- Do not have to permit or accommodate an employee’s use, possession, or distribution.
- May refuse to hire, discharge, discipline, or otherwise take an adverse employment action against an employee because of the employee’s use, possession, or distribution.
- May establish and enforce a drug testing policy, drug-free workplace policy, or zero-tolerance policy.
• **Cannot sue** an employer for refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against the potential employee / employee

• **Just cause** to discharge an employee for medical marijuana use in violation of drug testing policy, drug-free workplace policy, or zero-tolerance policy

• An employee, whose injury was the result of medical marijuana influence, is **not eligible for workers’ compensation** through BWC
The Law in the Future

• Formation of Medical Marijuana Businesses
• Advertising
• Testing Centers for Research
• Zoning Changes
• Tax Changes
• Lobbying for Marijuana for Personal Use
• Changes in Federal Regulations
QUESTIONS?

Cassandra L. Manna

216-623-0150
CManna@ralaw.com

222 South Main Street
Akron, OH 44308

© Roetzel & Andress LPA 2016