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BUSINESS

By Jamie Herzlich

What does legalized recreational pot mean for workplace rules?

With New York State expected to pass legislation allowing recreational marijuana use, employers are advised to review their policies on substance abuse.



Legalizing recreational marijuana is a top priority in Gov. Andrew M. Cuomo's 2019 agenda and employers are advised to check their policies. Photo Credit: Getty Images/Paul Bradbury

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Pot could become a new order of business in New York.

Gov. Andrew M. Cuomo has made legalizing recreational marijuana a top priority in the first 100 days of his third term and even laid out some initial details in his recent State of

the State address.

The fine print still must be hashed out, but employers may want to start thinking about how legislation — if passed — might impact their workplace policies. They will likely still be able to test and fire for substance abuse on the job, because, as one expert says, a law would not entitle anyone to "come to work drunk" — or high.



Employers probably will still be able to test and fire for substance abuse on the job, because, as one expert says, a law would not entitle anyone to "come to work drunk" -- or high. Photo Credit: Getty Images/iStockphoto/KLH49

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"Most believe it's not a matter of if, but a matter of when [a law] will be enacted," says Elizabeth S. Kase, co-chair of the medical marijuana law group at Abrams Fensterman LLP in Lake Success.

So far, 10 states and Washington, D.C., have legalized recreational marijuana for adults 21 and older.

And while New York employers don't have to make any changes right now, the possibility should at least be on their radar, she said.

"Employers have an opportunity to take stock . . . and anticipate the foreseeable changes of the law and determine whether they may wish to amend their existing policies," said Kase.

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Some companies may have done that after New York legalized marijuana for approved medical use. Under the Compassionate Care Act of 2014, Kase says, certain protections are afforded employees certified by the state to use cannabis-related medicines to treat recognized disabilities or diseases.

New York public health law prohibits employers from refusing to hire or otherwise penalize an individual solely for that person's status as a certified medical marijuana patient, said Christine Clearwater, president of Drug-Free Solutions Group. The Delray Beach, Florida, firm provides services that reduce the risks/losses related to substance abuse in the workplace.

But this doesn't mean employers have to relax policies regarding recreational marijuana usage, she said, noting states that have legalized recreational marijuana haven't limited employers from prohibiting it in the workplace to date.

So far, 10 states and Washington, D.C., have legalized recreational marijuana for adults 21 and older. Photo Credit: Getty Images/400tmax

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So in those states “employers can test for it, discipline for it and terminate for it,” said Clearwater, noting 35 percent of all workplace accidents, injuries and fatalities are caused by substance abuse.

In addition, about one in five employees are affected by substance abuse, and it costs firms between \$10,000 and \$12,000 per abuser annually to deal with lost productivity, absenteeism, medical benefits and workers compensation, she said.

That’s why companies need a robust substance abuse prevention policy that should include but is not limited to rules on marijuana, prescription drugs, alcohol, convictions, and refusals to test, said Clearwater.

Still, if recreational marijuana use is legalized here, it presents some challenges for employers, for example, determining when a person last used marijuana, say experts.

Unlike alcohol, THC (the main chemical compound in marijuana that causes a high) can stay in someone’s system for days to weeks.

With alcohol, test results are immediate and measurable, said Barbara DeMatteo, director of HR consulting at Portnoy, Messinger, Pearl & Associates in Jericho.

Testing for impairment with pot isn’t as clear-cut, she said. There’s a lack of consensus on the amount causing impairment.

Lab tests for marijuana and other substances of abuse usually are of urine, saliva and hair, said Clearwater. Rapid testing can’t necessarily detect if you smoked pot an hour ago or three days ago.

Still, in standard workplace drug testing, an employee showing a test result of 50 nanograms or more of THC would test positive as impaired, she said.

"Reaching that level means that at 50 nanograms or higher you have directly used . . . and are at risk to yourself and others," she said. "Think of it as a DUI on the highway — it is

not that you have alcohol in your system, it is that you hit .08 or higher that is the violation." And based on that an employer can take action.

While employers may choose to use that as a benchmark for impairment on the job, Neil M. Kaufman of Kaufman & Associates in Hauppauge, which has a strong niche in cannabis law, says some firms nationally are relaxing a prohibition of cannabis use when hiring, so they're not restricted from considering younger workers they might need to fill positions.

Locally employers should keep an eye on the issue, he said, but "there's no reason to take action yet . . . employers won't be able to determine how to react until we see the language of the NYS statute."

Still, Kaufman said, there's no harm in reviewing their drug policies.

And it's a given, if recreational marijuana is legalized, that doesn't entitle an employee to come to work impaired, says DeMatteo.

"Alcohol is legal, but you can't come to work drunk," she said.

Also, New York is an at-will employment state, and she believes employers won't have to relax drug policies if they don't want to.

Ultimately, "on the job, we have to make sure everyone has the ability to continuously use good judgment, work efficiently, effectively and reliably," said DeMatteo.

Holy smoke!

Legal cannabis sales are expected to reach \$75 billion by 2030 in the U.S.

Source: Cowen & Co.

By Jamie Herzlich

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