

# Employment Practices Liability

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## Retail Sales of Recreational Marijuana Begin Today in Massachusetts: Implications for Connecticut Employers

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In 2016, Massachusetts residents voted in favor of a ballot initiative to legalize the recreational use of marijuana. This initiative will be effectuated on November 20, 2018 (today), when retail shops begin to sell marijuana in Massachusetts. These are the first legal retail stores for recreational marijuana in the Eastern region of the United States.

Now that the recreational use of marijuana is legal in Massachusetts, and many Connecticut residents live just a short drive from a southern Massachusetts town in which marijuana may be purchased legally, Connecticut employers might be curious as to whether this should affect their personnel policies and decisions. The short answer is no.

The palliative use of marijuana is legal in Connecticut pursuant to Conn. Gen. Stat. § 21a-408 et seq., and under state law, employers are prohibited from refusing to hire an applicant, discharging, penalizing or threatening an employee solely on the basis of the applicant or employee's status as a qualifying patient who uses medical marijuana or primary caregiver who manages a qualifying patient's palliative use of marijuana. We note that it is our recommendation that because the state law conflicts with federal law, as explained further herein, public safety officials and DOT regulated employees (i.e., CDL drivers) remain subject to federal law. Furthermore, under state law, employers do not have to tolerate an employee's use of marijuana, or other intoxicating substances, during work hours, and an employer can discipline an employee for being under the influence of an intoxicating substance during work hours. Additionally, the law does not permit the ingestion of marijuana: 1) in the workplace, 2) in a motor bus, school bus or other moving vehicle, 3) on any school grounds; or 4) in the presence of a person under the age of eighteen, unless such person is a qualifying patient or research program subject.

Under Connecticut law, employers may require an employee to submit to a drug test under two circumstances. Random drug testing is permitted if: 1) such test is authorized under federal law, 2) the employee serves in an occupation which has been designated as a high-risk or safety-sensitive occupation pursuant to regulations adopted by the Labor Commissioner, or is employed to operate a school bus or a student transportation vehicle, or 3) the urinalysis is conducted as part of an employee assistance program sponsored or authorized by the employer in which the employee voluntarily participates. Otherwise, random drug testing is not permitted in Connecticut, and an employer may only require an employee to submit to a drug test if an employer has a reasonable suspicion that the employee is under the influence of drugs or alcohol which adversely affects or could adversely affect such employee's job performance.

Notably, the language of Connecticut's medical marijuana statute does not prohibit possession of marijuana at the workplace, nor does it prohibit the palliative use of marijuana during a day on which an employee may be required to work, as long as the ingestion is not during work hours and the employee is not intoxicated during work hours.

However, employers should keep in mind that although some states have legalized the recreational use of marijuana, as well as the use of marijuana for medicinal purposes, use of marijuana remains illegal as a Schedule I Controlled Substance under federal law, and it is a federal offense to transport marijuana across state lines. Indeed, the Department of Transportation has made clear that the use of marijuana in states in which it is legal, including the use of marijuana for medicinal purposes, will not constitute a valid medical explanation for a transportation employees' positive drug test result. Accordingly, DOT regulated employees and public safety officials should refrain from marijuana use, both recreationally and medicinally.

In conclusion, although recreational use of marijuana is legal in Massachusetts, it remains illegal in Connecticut except for medicinal purposes, and Connecticut employers do not have to tolerate substance use or intoxication therefrom during work hours, even if the substance was obtained or used in a state where it is legal. Moreover, it is our recommendation that police and public safety officials, as well as DOT regulated employees remain prohibited from using marijuana for any purpose.

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Cindy Cieslak is a partner at Rose Kallor, LLP. Rose Kallor, LLP regularly represents and advises private and public sector employers on matters pertaining to the employer-employee relationship, including discrimination, harassment, and wage and hour issues. If you have questions about this legal update, please contact Rose Kallor, LLP at 860-361-7999. If you wish to receive future updates on labor and employment related topics, please contact Carolyn Field, CIRMA Communications Supervisor at [cfield@ccm-ct.org](mailto:cfield@ccm-ct.org).

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