

GUIDE FOR EMPLOYERS: CANNABIS IN THE WORKPLACE

Laws in effect:

- Substance Use Testing Law: Title 26, Chapter 7
- Maine Medical Use of Cannabis Act: Title 22, Chapter 558-C
- Cannabis Legalization Act (“Adult Use” or “Recreational”): Title 28-B, Chapter 1
- Maine Human Rights Act (MHRA)

Employment-Related Provisions:

1. Under the Maine Medical Use of Cannabis Act –

Section 2426. Scope

- **Construction.** This chapter may not be construed to require:
 - An employer to accommodate the ingestion of cannabis in any workplace or any employee working while under the influence of cannabis

Section 2430-C. Protections for Authorized Activity

- **School, employer or landlord may not discriminate.** A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person's status as a qualifying patient or a primary caregiver unless failing to do so would put the school, employer or landlord in violation of federal law or cause it to lose a federal contract or funding. This subsection does not prohibit a restriction on the administration or cultivation of cannabis on premises when that administration or cultivation would be inconsistent with the general use of the premises. A landlord or business owner may prohibit the smoking of cannabis for medical purposes on the premises of the landlord or business if the landlord or business owner prohibits all smoking on the premises and posts notice to that effect on the premises.

2. Under the Cannabis Legalization Act –

Section 112. Employment policies

Except as otherwise provided in the Maine Medical Use of Cannabis Act, an employer:

- **Cannabis in the workplace.** Is not required to permit or accommodate the use, consumption, possession, trade, display, transportation, sale or cultivation of cannabis or cannabis products in the workplace;
- **Workplace policies regarding cannabis use.** May enact and enforce workplace policies restricting the use of cannabis and cannabis products by employees in the workplace or while otherwise engaged in activities within the course and scope of employment; and
- **Discipline of employees.** May discipline employees who are under the influence of cannabis in the workplace or while otherwise engaged in activities within the course and scope of employment in accordance with the employer's workplace policies regarding the use of cannabis and cannabis products by employees.

3. Under the Maine Human Rights Act –

- Employers may wish to consult with private counsel when dealing with issues concerning an individual with a disability as defined by the MHRA. (this is not an area covered by MDOL)

Discussion

- Based on the wording of the law, an employer may continue to:
 - Prohibit any use or possession of cannabis **in the workplace***
 - Discipline employees found “*under the influence*” (impaired) by cannabis while **in the workplace or in the course and scope of employment** in violation of workplace policies**
 - Enact and enforce workplace policies restricting the use of cannabis while **in the workplace or in the course and scope of employment****

***workplace** – means any plant, yard, premises, room or other place where an employee or employees are engaged in the performance of labor or service over which the employer has the right of access or control. (per Title 26, Chapter 1)

****course and scope of employment** – should be defined in workplace policy and substance use testing policy if the employer intends its definition to be broader than the legal definition of the workplace

- *In Maine, cannabis is still on the list of substances for which an employer may test. Testing is only allowed if a company has a drug testing policy that has been approved by the Maine Department of Labor (MDOL) or they are testing following federal testing requirements. Employers that do continue to test for cannabis, or take disciplinary action for cannabis use, must comply with the Substance Use Testing Law, the Cannabis Legalization Act, the Maine Medical Use of Cannabis Act and the Maine Human Rights Act. The Department cannot provide legal advice and we encourage employers to consult with private legal counsel regarding the law.*

MDOL Recommendations

1. Employers should first establish a drug-free workplace policy (DFWP) that articulates their requirements and expectations of employees regarding substance use and impairment while in the workplace.
2. The Maine Department of Labor (MDOL) recommends that before taking any actions or preparing new policies relating to employees and substance use, employers should consult with experienced employment counsel.
3. Employers who wish to conduct substance use testing may also develop a drug testing policy for approval by MDOL. See https://www.maine.gov/labor/labor_laws/substanceusetesting/ for more information about the policies and the testing law. The Department provides guidance and written templates to employers who wish to develop either a drug-free workplace policy or any drug testing policies.
4. With approved policies in place, employers may conduct the following types of drug testing:

Applicants: Pre-employment

Employees: Random, Reasonable Suspicion (formerly Probable Cause), and/or Criteria-based tested testing (e.g. as required by contract / formerly Arbitrary)

MDOL, in collaboration with Maine DHHS, has developed a program to train employers to detect and respond to impairment in their worksites. This is a workplace adaptation of certain protocols used by Drug Recognition Experts in the law enforcement community and is currently offered through the Department’s SafetyWorks! Training Institute. To register for a class, go to:
<https://safetyworksmaine.gov/training/scheduled-classes>

For more information, contact the Bureau of Labor Standards at (207) 623-7900 or mdol@maine.gov (TTY users dial Maine Relay 711)