

TYPES NOT MAPPED YET November 09, 2022 | TTR not mapped yet | Emma R. Lapp, Chuck M. Poplstein

Missouri's new marijuana law: What employers need to know

The uncertified results for the November 8, 2022 election indicates Missouri voters have passed Amendment 3, legalizing marijuana for personal use (effective December 8, 2022). Assuming the unofficial results will be certified, what does this mean for Missouri employers? Here are some key takeaways:

Question 1: What am I NOT allowed to do under Amendment 3?

Answer: An employer cannot discriminate against (in hiring, firing, or terms & conditions of employment) or otherwise penalize an applicant or employee *who has a valid medical marijuana patient ID card for*:

1. having a valid patient ID card; or
2. legally using lawful medical marijuana off-premises and outside work hours; or
3. testing positive for medical marijuana.

Exception 1: This does not apply to employers who would otherwise lose a monetary or license-related benefit under federal law.

Exception 2: These protections do not permit an applicant or employee with a valid patient ID card to use, possess, or be under the influence of medical marijuana while working (on the employer's premises or during work hours).

Question 2: Can I prevent my employees from using marijuana outside of work?

Answer: You can take disciplinary action against an employee whose lawful, off-duty use of marijuana:

1. affects that employee's ability to perform job-related responsibilities; or
2. affects the safety of others; or
3. conflicts with a bona fide occupational qualification.

Question 3: Can I still drug test applicants and/or employees?

Answer: Yes. However, if an applicant or employee has a valid patient ID card, you cannot take action against them for testing positive for medical marijuana. (See Question 1).

Question 4: Can I still have a drug-free workplace?

Answer: Yes. You are allowed to ban marijuana from your workplace. You can prevent employees from possessing, using, or being under the influence of marijuana while working (on the employer's premises or during work hours), whether it's for personal use or medical use. You will not face liability for refusing to hire an applicant or disciplining or discharging an employee for working or attempting to work while under the influence of marijuana.

Question 5: Can I still inquire about an applicant's criminal history on a job application?

Answer: Yes. In Missouri, it's legal for a job application to ask about the applicant's criminal history. However, a provision of Amendment 3 expunges the criminal history records (including arrest, plea, conviction, and sentence)



for certain marijuana-related offenses. This means your application cannot require the applicant to acknowledge the existence of, or answer any questions about, the expunged record.

A number of issues remain to be clarified under this new Constitutional Amendment, including exactly what evidence is required to establish someone is under the influence of marijuana. We will endeavor to provide updates on these issues as the Amendment is interpreted by the State and the Courts.

[Chuck Poplstein](#) and [Emma Lapp](#) are attorneys in Thompson Coburn's Labor & Employment group.

authorsTest

emma

Emma R. Lapp

chuck

Chuck M. Poplstein