

EZRA T. CLARK, III
Attorney
Direct Line: 480-844-0039
Facsimile Line: 480-844-0035
E-mail: etc@clarkfirm.com



63 East Main Street, 5th Floor
Mesa, Arizona 85201

MAILING ADDRESS
P.O. Box 31036
Mesa, Arizona 85275-1036

Cassandra Ferrigno-Bren, Paralegal

EMPLOYER ALERT

RECREATIONAL MARIJUANA IS LEGAL IN ARIZONA: WHAT EMPLOYERS NEED TO KNOW AND DO NOW

November 2020

On November 3, 2020, Arizona voters legalized recreational marijuana by passing Proposition 207 by 60% of the vote. Thus, sometime in early 2021,¹ it will be legal in Arizona to sell, buy and use marijuana for recreational purposes.

A. Effect on Workplace

Arizona employers are understandably concerned about the new law's effect on their business operations and personnel. Fortunately, Proposition 207 makes clear that employers may continue to (1) maintain drug-and-alcohol-free workplace policies; and (2) prohibit the use, consumption, possession, transfer, display, transportation, sale or cultivation of marijuana in the workplace. (A.R.S. §36-2851). However, *medical marijuana cardholders* are still afforded certain protections under Arizona's Medical Marijuana Law, which the voters passed in 2010.

B. What Employers Should Do.

Arizona employers should do the following to prepare for inevitable changes because of legalized (and expected wider use of) marijuana:

1. Review your existing policies. Do you have a drug-free workplace policy? Do your policies prohibit and/or impose disciplinary action for using, consuming, possessing, or selling illegal drugs and marijuana?
2. Review or adopt a Drug & Alcohol Testing policy. Do you have an existing Drug & Alcohol Testing policy? Does it comply with Arizona's drug testing statute (A.R.S. § 23-493.04)? Does the policy define "safety sensitive positions"²? Does it allow you to exclude users of illegal drugs (including medical marijuana cardholders) from working in safety-sensitive positions?

¹ Recreational marijuana will be legal as soon as Proposition 207 is officially certified. However, before adults can legally buy it, the Arizona Department of Health Services (ADHS) must license recreational marijuana dispensaries. That process is expected to begin in January 2021 and take a few months.

² A safety sensitive position is one that the employer, in good faith, believes could affect the safety or health of the employee or others while performing their job duties. Examples include: operating a vehicle, equipment, or machinery and tools; repairing, maintaining, or monitoring the performance of such equipment; traveling to customers' homes to perform job duties; handling food and/or medicine; working in any occupation regulated pursuant to Title 32 (which includes almost every type of licensed professional in Arizona).

Does it define *the circumstances* under which a drug or alcohol test will occur? For example, employers frequently test for illegal drugs (or alcohol) in four (4) circumstances: (1) before hire; (2) after a workplace accident; (3) on a random basis; and/or (4) upon reasonable suspicion.

3. Review offer letters and applications. Do your job offer letters state clearly that the offer is contingent on a successful pre-hire drug screen? That the company maintains a drug-and-alcohol free workplace? Similarly, do your application forms state that the company maintains a drug-and-alcohol free workplace? If not, should they?

Conclusion

We will continue to monitor the implementation of Arizona's recreational marijuana laws and provide updates as appropriate. Please let us know if we can help answer your questions or help you develop, review or implement appropriate policies and procedures.

Mr. Clark's contact information is (480) 844-0039 or etc@clarkfirm.com.