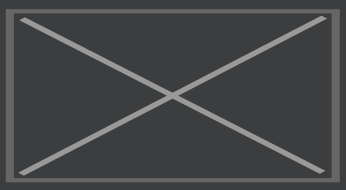

# News & Insights

## Employment Alert! Update for Oklahoma Employers on Medical Marijuana Law

March 14, 2019

*Hall Estill Employer Alert*

https://conta.cc/2FbZBFn

On March 14, 2019, Oklahoma Governor Kevin Stitt signed House Bill 2612 which provides some guidance for employers with employees who hold medical marijuana licenses. Employers may still not refuse to hire, discipline, discharge or otherwise penalize an applicant or employee solely on the basis of either (1) the applicant's or employee's status as a medical marijuana licensee, or (2) a positive test for marijuana components or metabolites. However, the new law clarifies that employment action may be taken if (1) the applicant or employee is not in possession of a valid medical marijuana license, (2) the licensee possesses, consumes or is under the influence of medical marijuana or medical marijuana product while at the place of employment or during the fulfillment of employment obligations, or (3) the position is one involving safety-sensitive job duties.

Importantly, employers may now take employment action on the basis of a positive test for marijuana if employees are in a position involving safety-sensitive job duties. This is true even if such position is not covered by U.S. Department of Transportation regulations. "Safety-sensitive" is defined in the new law to mean any job that includes tasks or duties that the employer reasonably believes could affect the safety and health of the employee performing the task or others including, but not limited to, any of the following:

a. the handling, packaging, processing, storage, disposal or transport of hazardous materials,
b. the operation of a motor vehicle, other vehicle, equipment, machinery or power tools,
c. repairing, maintaining or monitoring the performance or operation of any equipment, machinery or manufacturing process, the malfunction or disruption of which could result in injury or property damage,
d. performing firefighting duties,
e. the operation, maintenance or oversight of critical services and infrastructure including, but not limited to, electric, gas, and water utilities, power generation or distribution,
f. the extraction, compression, processing, manufacturing, handling, packaging, storage, disposal, treatment or transport of potentially volatile, flammable, combustible materials, elements, chemicals or any other highly regulated component,
g. dispensing pharmaceuticals,
h. carrying a firearm, or
i. direct patient care or direct child care.

House Bill 2612 also provides that the law does not require an employer to permit or accommodate the use of medical marijuana on the property or premises of any place of employment or during hours of employment. This is relevant for an analysis of an employer's obligations under disability discrimination statutes.

Additionally, House Bill 2612 provides that all smokable, vaporized, vapable and e-cigarette medical marijuana product inhaled through vaporization or smoked by a medical marijuana licensee are subject to the same restrictions for tobacco under the Smoking in Public Places and Indoor Workplaces Act. Thus, a commercial property or business owner may prohibit the consumption of medical marijuana or medical marijuana product by smoke or vaporization on the premises, within the structures of the premises, and within ten feet of the entryway to the premises.

With the enactment of House Bill 2612, which will take effect 90 days after the legislature adjourns, Hall Estill recommends that employers review and update their drug and alcohol use policies and procedures, as well as any drug and alcohol testing programs. If you need any assistance or have any questions about medical marijuana, please contact your Hall Estill Attorney directly.

## Practices

- Labor & Employment
- Cannabis Law