Employment Alert! Unity Bill Provides Guidance for Employers of Individuals with Medical Marijuana Licenses

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Hall Estill Newsletter

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Employment Alert! Oklahoma's Unity Bill Provides Additional Guidance for Employers of Individuals with Medical Marijuana Licenses

The Oklahoma Medical Marijuana and Patient Protection Act, commonly referred to as the Unity Bill, was signed into law on March 14, 2019, and further defines the relationship between employers and individuals with medical marijuana licenses. The law is codified as 63 O.S. § 427.1, et seq., and takes effect August 30, 2019.

As originally codified, State Question 788 prohibited an employer from taking action against an individual with a medical marijuana license solely based on that individual's status as a medical marijuana license holder or as a result of a drug test showing positive for marijuana. The law did, however, allow an employer to take action against a license holder if the individual used or possessed marijuana in the workplace or during the hours of employment.

The Unity Bill further defines the relationship between employers and license holders. The Unity Bill provides that an employer, unless otherwise required by federal law or required for federal funding, may not refuse to hire, discipline, discharge, or otherwise penalize an applicant or an employee based solely on the fact that the applicant or employee holds a medical marijuana license.

Additionally, with respect to drug testing, the Unity Bill provides that an employer may not refuse to hire, discipline, discharge, or otherwise penalize an applicant or an employee solely on the basis of a positive drug test for marijuana unless (1) the applicant or employee does not possess a valid license; (2) the licensee possesses, consumes, or is under the influence of marijuana at work or while fulfilling employment obligations; or (3) is in a position that involves safety-sensitive job duties.

Safety-sensitive job duties are defined as "any job that includes tasks or duties that the employer reasonably believes could affect the safety and health of the employee performing the task." Safety-sensitive tasks include, but are not limited to:

• the handling, packaging, processing, storage, disposal, or transport of hazardous materials;

• the operation of a motor vehicle, other vehicle, equipment, machinery or power tools;

• 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;

• performing firefighting duties;

• the operation, maintenance, or oversight of critical services and infrastructure including, but not limited to, electric, gas, and water utilities, power generation, or distribution;

• 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;

• dispensing pharmaceuticals;

• carrying a firearm; or

• direct patient care or direct child care.

By addressing safety-sensitive positions, the Unity Bill affords employers greater protections when navigating the employment relationship with medical marijuana licensees.

The Unity Bill further clarifies the relationship between employers and license holders by noting that an employer is not required to (1) permit or accommodate the use of medical marijuana on the property during hours of employment or (2) reimburse a person for costs associated with the use of medical marijuana. Finally, the Unity Bill expressly provides that it shall not prevent an employer from having written drug testing and impairment policies in accordance with Oklahoma Standards for Workplace Drug and Alcohol Testing Act.

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.

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