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News & Insights

Oklahoma State Question 788 and its Impact on Employers - What Now?

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While Oklahoma State Question 788 passed June 26, it could be several months to a year before medical marijuana is widely available in Oklahoma. As a result, employers have sufficient time to implement new policies and procedures to address this change in the state law. Before developing new policies and/or revising existing policies, employers should note the anti-discrimination provision of the statute:

"Unless a failure to do so would cause an employer to imminently lose a monetary or licensing benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person based upon either: (1) The person's status as a medical marijuana license holder; or (2) Employers may take action against a holder of a medical marijuana license . . . if the holder uses or possesses marijuana while in the holder's place of employment or during the hours of employment. Employers may not take action against the holder of a medical marijuana license solely based upon the status of an employee as a medical marijuana license holder or the results of a drug test showing positive for marijuana and its components."

So what does this mean in a nutshell? First, it appears that there is an exception for companies that are federal contractors or receive federal grants. Under federal law, marijuana remains an illegal Schedule 1 drug. Thus, it would appear that the anti-discrimination provision does not apply to employers with federal contracts who could "imminently lose a monetary or licensing benefit under federal law or regulation" if they were to employ individuals who use medical marijuana.

Second, an employer cannot discriminate against an employee solely for (1) holding a medical marijuana license or (2) testing positive on a drug test for marijuana and its components. The employer, however, can take action against medical marijuana license holders if the license holder uses or possesses marijuana while in the workplace or during work hours.

We will continue to monitor developments and send updates periodically so that employment policies can be amended when appropriate.

Please contact your Hall Estill Attorney directly with any specific situations pertaining to marijuana that may arise in the interim. Hall Estill attorneys in our Arkansas, Colorado, Oklahoma and Oregon offices have experience in assisting clients with marijuana related legal matters.

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