

Issue 2: What Legalized Recreational Marijuana Use Means for Ohio Employers

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On November 7, 2023, Ohio voters passed Issue 2, a measure that will legalize the purchase and use of recreational marijuana. By passing this initiative, Ohio becomes the 24th state to legalize recreational marijuana.

Issue 2 creates Chapter 3780 of the Ohio Revised Code. This new law will become effective on December 7, 2023. Under the statute, Ohio employers retain the following rights:

Employers are not required to permit or accommodate an employee's use, possession or distribution of marijuana;

Employers are still permitted to refuse to hire, discharge, discipline or otherwise take an adverse employment action against an individual because of that individual's use, possession or distribution of marijuana in the workplace;

Employers are still permitted to establish and enforce drug testing

policies, drug-free workplace policies or zero-tolerance drug policies;
and

If an employer terminates an employee because of that individual's marijuana use in violation of the employer's drug-free workplace policy, zero-tolerance policy or other formal drug program or policy, the employee will be considered to have been discharged for just cause.^[1]

What Employers Need to Know

Issue 2, or Section 3780.35, will not drastically affect the workplace. Employers can still enforce drug-testing policies and prohibit employee use, possession or distribution of marijuana while at work. However, Dinsmore encourages employers to review their current drug policies, particularly concerning marijuana use and ensure employees are aware of company policies and how they will be enforced.

Employers should also note that because Issue 2 was a citizen-led initiative amending the Revised Code and not a state constitutional amendment, the legislature has the authority to amend the language of Chapter 3780.

If you have any questions, please do not hesitate to reach out to your local Dinsmore attorney.

^[1] See O.R.C. §3780.35 for a complete list of employer rights under the statute.

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