

What Does Issue 2 Mean for Counties in Ohio?

County Commissioners
Association of Ohio

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Roadmap

- Issue 2 Explained
- Recent History of Marijuana in Ohio
- Rights and Obligations of County Employers
- Drug-Free Workplace Policies After Issue 2
- Employment Drug Testing After Issue 2
- Messaging and Training
- Q&A

Federal Law

- Marijuana Remains a Schedule I, Controlled Substance
 - No currently accepted medical use
 - High potential for abuse
 - Lack of accepted safety for use under medical supervision
 - Illegal to use, possess, sell, distribute
- Department of Transportation Regulations continue to be enforced even in states that have legalized marijuana.
- ***Marijuana User is not protected in employment under the American's with Disabilities Act

Ohio HB 523 (2016)

- In 2016 Ohio became the 25th state to allow **medical marijuana**
- Legalized the distribution of marijuana to certain authorized persons with qualifying conditions.
- Over 20 Qualifying Medical Conditions:
- Examples: Crohn's Disease, Epilepsy, Fibromyalgia, Glaucoma, Inflammatory Bowel Disease, PTSD, Spinal cord disease/injury, Traumatic Brain Injury, Ulcerative Colitis
- Ohio SB 288 – Expungement of certain marijuana convictions

Ohio HB 523 (2016)

- Employers are not required to permit or accommodate an employee's use, possession, or distribution of **medical** marijuana.
- Employers are not required to allow employees to be under the influence while at work.
- Employers are not prohibited from establishing and enforcing:
 - Drug testing policy
 - Drug-free workplace policy
 - Zero-tolerance drug policy₅

Ohio Issue 2

- Approved Nov. 7, 2023 by ~ 57% of voters
- Effective Dec. 7, 2023 as an initiated statute
- Ohio became the 24th state to legalize recreational marijuana
- ~ half of U.S. population lives in state that has legalized recreational marijuana

Ohio Issue 2 – Legal Uses of Cannabis

- “Cannabis”, “Marijuana”, “Marihuana”
- Consumer must be at least 21 years old
- Home Grow = 6 / 12 plants per person / residence under certain conditions: O.R.C. 3780.29
 - Landlord may prohibit in Lease Agreement
- Can also acquire from dispensary

Ohio Issue 2 – Cannabis Sales

- Requires State license:
 - Cultivator (Level I, II, III)
 - Processor
 - Dispensary
 - Testing Laboratory
- Likely Operational in 2024
- Ohio MM Program Unaffected



PROGRAM UPDATE: BY THE NUMBERS

Last Updated: October 30, 2023

Cultivators

- 23 Level I provisional licenses
 - [21 Provisional licensees have received Certificates of Operation](#)
- 14 Level II provisional licenses
 - [13 Provisional licensees have received Certificates of Operation](#)

Dispensaries

- 107 Certificates of Operation ([MAP](#)) ([LIST](#))
- 27 Active Provisional Dispensary Licenses

Patients & Caregivers (as of 9/30/2023)

- 844,022 Recommendations (a patient may have multiple recommendations)
- 398,057 Registered patients (historical)
 - 23,258 Patients with Veteran Status
 - 24,233 Patients with Indigent Status
 - 1,374 Patients with a Terminal Diagnosis
- 184,958 Patients with both an active registration and an active recommendation
- 369,587* Unique patients who purchased medical marijuana (as reported to OARRS by licensed dispensaries)
- 37,214 Registered Caregivers

Physicians (as of 10/12/2023)

- 640 [Certificates to Recommend](#)

Processors

- 46 provisional licenses
 - [44 Provisional licensees have received Certificates of Operation](#)

*as of 8/31/2023

Ohio Issue 2 – Cannabis Sales

- **Cannabis authorized for sale =**
 - plant material and seeds, live plants, clones, extracts, **drops, lozenges, oils, tinctures,** edibles, **patches, smoking** or combustible product, **vaporization** of product, **beverages, pills,** capsules, suppositories, **oral pouches,** oral strips, oral and topical sprays, salves, lotions or similar cosmetic products, and inhalers. R.C. 3780.04.

Issue 2 for Employers

- The employer protections in Issue 2 are very similar to those enacted in Ohio HB 523 as to Medical Marijuana
- Nothing in O.R.C. Chapter 3780 (Issue 2):
 - (1) Requires an employer to permit or accommodate an employee's **use, possession, or distribution** of adult use cannabis otherwise in compliance with this chapter;
 - (2) Prohibits an employer from **refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action** against an individual with respect to hire, tenure, terms, conditions, or privileges of employment because of that individual's use, possession, or distribution of cannabis otherwise in compliance with this chapter;

Issue 2 – O.R.C. Sec. 3780.35

- (3) Prohibits an employer from establishing and enforcing a drug testing policy, **drug-free workplace policy**, or zero-tolerance drug policy;
- (4) Interferes with any federal restrictions on employment, including the regulations adopted by the United States **Department of Transportation** in Title 49 of the Code of Federal Regulations, as amended;
- (5) Permits an individual to **commence a cause of action against an employer** for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against an individual with respect to hire, tenure, terms, conditions, or privileges of employment related to the individual's use of cannabis; or

Issue 2 – O.R.C. Sec. 3780.35

- (6) Affects the authority of the [BWC] to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program [ex. **DFSP**]
- (B) An individual who is discharged from employment because of that individual's use of cannabis shall be considered to have been discharged for just cause for purposes of [Unemployment Compensation] **if the individual's use of cannabis was in violation of an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of cannabis.**

Drug Free Policies After Issue 2

- Many existing drug-free policies will be unaffected
- Messaging to the workforce that Issue 2 does not change or create an exception to the drug free workplace policy;
 - marijuana is still prohibited.
 - legal use off duty will not excuse a positive test and violation of the policy

Drug Free Policies After Issue 2

- Will Issue 2 result in more usage?
- Increase in injuries?
- Employee expectations about lawful use
- *Example:* IAFF, Local 1729 v. City of Whitehall. Employee claimed lawful CBD use excused positive drug test.

Drug Testing

- County appointing authorities may still conduct drug tests, as before, but this is a reminder to firm-up testing criteria, methods and protocol.
- Timing: Pre-Employment? Post-Accident? Reasonable Suspicion? Random? Return to Duty?
- **Testing Methods for Marijuana are being reevaluated. Some employers are moving to saliva testing for marijuana to detect more recent usage.

Drug Testing by Public Sector Employers

- In contrast to the private sector, local government employers are restricted as to when and why they can test employees:
- U.S. Constitution Fourth Amendment: Citizens (incl. government employees) have the “...right to be free from unreasonable searches and seizures.”
 - Generally, the Employer must have reasonable suspicion of intoxication to initiate a test.
 - Exception: A special need exists, such as due to the safety sensitive nature of the job. A **Safety Sensitive** job is generally one where even a momentary lapse in attention or judgment can have disastrous consequences leading to injury or death: Examples: Deputies, CDL Holders.
- Collective Bargaining Agreements

Training

- After Issue 2, it may be important to train supervisors and managers on:
 - Implementing the drug free workplace policy
 - Recognizing and documenting reasonable suspicion of impairment



Implementation

- The employer develop procedures to implement drug testing, including:
 - Documenting reasonable suspicion, if applicable
 - Working with the collecting and testing site
 - Transportation to/from collection site
 - Employee's status while awaiting results

Reasonable Suspicion

- Example: "reasonable cause" means, but is not limited to, evidence that an employee is or was using alcohol, a controlled substance, or marijuana drawn from specific, objective facts and reasonable inferences drawn from these facts in light of experience and training. Derived from direct observation of:
 - use, possession, or distribution
 - physical symptoms of intoxication
 - pattern of abnormal behavior
 - tip from a reliable source

THANK YOU

IF YOU HAVE ANY QUESTIONS, PLEASE ASK!

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