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HRA-GC LEGAL UPDATE
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New Hampshire legalizes medical marijuana

On July 23, Governor Maggie Hassan signed a bill that made New Hampshire the 19th state to legalize the use of medical marijuana for treating patients with chronic pain. A number of states have adopted medical marijuana laws, but the regulatory framework that must be established in New Hampshire may lead to lengthy delays before patients are able to avail themselves of this treatment option. The new law also has implications for employers.

NH approves use of medical marijuana

The law allows patients who suffer from "chronic or terminal diseases" or "debilitating medical conditions" to obtain marijuana at treatment centers, which will dispense the drug under carefully controlled conditions. The legislation specifically identifies hepatitis C, cancer, spinal cord injuries, Crohn's disease, and multiple sclerosis as serious enough to allow patients to obtain medical marijuana. Patients may use medical marijuana only if their pain has not been ameliorated by more traditional therapies.

To stave off prescription abuse, the law specifies that patients must get the prescription from a physician who has been treating them for at least three months. The new law also provides for a registry program that will issue special identification cards to patients. The registry cards will allow patients to legally possess up to 2 oz. of marijuana. The law also provides for a 15-member Therapeutic Use of Cannabis Advisory Council, which will oversee and support the establishment of the medical marijuana program.

Implementation?

The new law specifies that the state has 18 months to implement the program.

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Early indications are that the New Hampshire Department of Health and Human Services (DHHS) may not implement the program quickly. Michael Holt, the rules coordinator at the DHHS, said in an interview with the *Concord Monitor*, "I suspect it will take us [a] full year to get this program up and running."

Siting and establishing authorized dispensaries throughout New Hampshire creates additional potential for delay. Local planning and zoning boards may need to consider whether dispensaries and growing facilities will be allowed under local land-use ordinances, among other things. Concord Zoning Administrator Craig Walker was recently quoted as saying that growing facilities and dispensaries are "a new and different creature." We reasonably expect other zoning and planning personnel across the state to grapple with the new law, which permits the growing and distribution of what has long been considered an illegal drug.

Implications for employers

Medical marijuana will certainly have an impact on the workplace once regulations are in place and employees begin to avail themselves of the new law, which prohibits employees from smoking marijuana at their place of work. However, the law allows marijuana use at work if an employer grants permission in writing. The law does not prohibit employers from enforcing rules against ingesting marijuana or working under the influence.

The law explicitly prohibits employers from discriminating against employees or applicants based on their status as medical marijuana users. On the other hand, if you don't grant employees written permission to use marijuana in the workplace, you are still at liberty to discipline those who are impaired by or test positive for marijuana.

Bottom line

The legalization of medical marijuana in New Hampshire is certainly a major development. You should carefully familiarize yourself with the specifics of the law and the rules (as they are developed) to ensure you are supportive of chronically ill employees and are mindful of and vigilant against a potential new kind of unlawful employment action. As always, Sulloway & Hollis stands ready to provide advice in this and other complex aspects of an ever-changing legal landscape.

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**TITLE X
PUBLIC HEALTH**

***CHAPTER 126-X
USE OF CANNABIS FOR THERAPEUTIC PURPOSES***

RSA 126-X:1 Definitions. – In this chapter:

* * *

IX. (a) "Qualifying medical condition" means the presence of:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C currently receiving antiviral treatment, amyotrophic lateral sclerosis, muscular dystrophy, Crohn's disease, agitation of Alzheimer's disease, multiple sclerosis, chronic pancreatitis, spinal cord injury or disease, traumatic brain injury, or one or more injuries that significantly interferes with daily activities as documented by the patient's provider; and

(2) A severely debilitating or terminal medical condition or its treatment that has produced at least one of the following: elevated intraocular pressure, cachexia, chemotherapy-induced anorexia, wasting syndrome, severe pain that has not responded to previously prescribed medication or surgical measures or for which other treatment options produced serious side effects, constant or severe nausea, moderate to severe vomiting, seizures, or severe, persistent muscle spasms.

(b) The department may include a medical condition that is not listed in subparagraph (a) that the department determines, on a case by case basis, is severely debilitating or terminal, based upon the written request of a provider who furnishes written certification to the department.

126-X:3 Prohibitions and Limitations on the Therapeutic Use of Cannabis. –

I. A qualifying patient may use cannabis on privately-owned real property only with written permission of the property owner or, in the case of leased property, with the permission of the tenant in possession of the property, except that a tenant shall not allow a qualifying patient to smoke cannabis on rented property if smoking on the property violates the lease or the lessor's rental policies that apply to all tenants at the property. However, a tenant may permit a qualifying patient to use cannabis on leased property by ingestion or inhalation through vaporization even if smoking is prohibited by the lease or rental policies. For purposes of this chapter, vaporization shall mean the inhalation of cannabis without the combustion of the cannabis.

II. Nothing in this chapter shall exempt any person from arrest or prosecution for:

(a) Being under the influence of cannabis while:

(1) Operating a motor vehicle, commercial vehicle, boat, vessel, or any other vehicle propelled or drawn by power other than muscular power; or

(2) In his or her place of employment, without the written permission of the employer; or

(3) Operating heavy machinery or handling a dangerous instrumentality.

(b) The use or possession of cannabis by a qualifying patient or designated caregiver for purposes other than for therapeutic use as permitted by this chapter;

* * *

(d) The possession of cannabis in any of the following:

* * *

(2) A place of employment, without the written permission of the employer; or

* * *

III. Nothing in this chapter shall be construed to require:

(a) Any health insurance provider, health care plan, or medical assistance program to be liable for any claim for reimbursement for the therapeutic use of cannabis; or

(b) Any individual or entity in lawful possession of property to allow a guest, client, customer, or other visitor to use cannabis on or in that property; or

(c) Any accommodation of the therapeutic use of cannabis on the property or premises of any place of employment . . . This chapter shall in no way limit an employer's ability to discipline an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis.

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