IS THE GRASS REALLY GREENER?

Legalized Medical Marijuana in Ohio

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Today’s roadmap

What have we learned from other states?

What must Ohio employers do to maintain a safe workplace?

How will legalization affect employers / multi-state employers?
Without getting into the weeds…

Marijuana is a Schedule 1 controlled substance under the federal Controlled Substances Act
- **Schedule 1**: no currently acceptable medical use, lack of accepted safety for use under medical supervision, and a high potential for abuse

- **Schedule 2**: high potential for abuse
- Regulated by five federal agencies, including FDA, DEA
- Must obtain federal waiver to conduct testing or studies
- Until August 2016, could only be grown at one authorized facility in Oxford, MS
Legalization is growing like a weed

Marijuana Legalization Status
- Medical marijuana legalized
- Marijuana legalized for recreational use
- No laws legalizing marijuana

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Recreational Marijuana

- Alaska
- Colorado
- Oregon
- Washington
And 2016...
Coming soon?

Recreational
- Arizona
- California
- Maine
- Massachusetts
- Nevada

Medical
- Arkansas
- Florida
- Montana
- North Dakota
Federal law v. laws of states with legalized MM
- Random test 2009/THC, Coats was fired
- September 2014: Can employer prohibit use detected at work, when Lawful Activities statute protects employees who engage in lawful off-duty activity?
- June 2015: Case goes up in smoke at the high court
The science is still doobious

Marijuana consists of many components, some of which provide the “high” (THC), and others of which, like cannabidiols (CBDs), can be extracted for medicinal uses.
NIH/NIDA
Known risks

- Respiratory illnesses, lung changes, chronic cough
- Cancer
- Increase in myocardial infarctions
- Increased risk of psychosis in adolescents, young adults
- Memory loss
- Effect on coordination, concentration, alertness, perception, judgment, motor skills
Many MM laws permit parents of children with severe epilepsy or other seizure disorders access to marijuana that is ↓ in THC, ↑ in cannabidiol (CBDs), a non-mood-altering ingredient.
- Evidence of damage to brains of youths, teens
- American Academy of Pediatrics endorses more research and reclassifying marijuana
In March 2016, GW Pharmaceuticals released positive results of late-stage testing, and plans to take Epidiolex to the FDA later this year for use in Dravet’s Syndrome cases.
Epidiolex clinical trial

- Children can be hurt by using the whole plant

- Nearly pure CBD extract; contains optimal known compound for seizure treatment

- Dr. Patel study: “About half of the [kids] have had at least a 50% reduction in their seizures,” but more rigorous testing is needed
Cannabi$ i$ big busine$$

- **Food-based**: conventional oils and cooking fats
- **Industrial hemp**: plant parts with <0.3% THC. Hemp production requires permit from DEA. (Ohio’s law does not address hemp production)
- **Infused food products**: chocolate bars, lollipops, “relaxing mints”, infused jams, oils and butter spreads, infused coffee, tea, cider ( “G-cups”™), baking supplies, flavored moustache wax
About Us

An investment management company founded in 2013 to invest exclusively in the cannabis industry.
Ohio pot-entially dodged a bullet on November 3, 2015

Senate simultaneously hosts listening tour around the state, led by Sen. Kenny Yuko
- ResponsibleOhio movement is reconstituted with help ($$) of Marijuana Policy Project, a D.C.-based lobbying group responsible for the passage of several medical marijuana efforts. New citizen initiative:

- Other groups still attempt to legalize recreational and medical marijuana, through petition signature campaigns
Task force concludes its work at the end of March 2016

April 14, 2016: H.B. 523 is introduced by Steve Huffman, a physician from Tipp City
Multiple House, and then Senate committee meetings and edits, culminate in passage of Sub. H.B. 523 on May 8, 2016
Three days later, the constitutional amendment movement suspended its efforts to continue collecting signatures.

June 8, 2016: Bill is signed into law by governor
Welcome to CMH
The straight dope: What is “medical marijuana”?

Same meaning as marijuana as used in criminal provisions of ORC, but cultivated, processed, dispensed, tested, possessed, or used for a medical purpose.
Highlights of H.B. 523

- Legislation calls for General Assembly to encourage Congress to remove marijuana from Schedule 1 of CSA
- DEA announced in August it would not do so until FDA has more science to support doing so
Highlights of H.B. 523

- No home grow

- Cultivators must apply with the Ohio Department of Commerce to become licensed

- Those with certain criminal convictions are disqualified from growing marijuana
No cultivation or sale within 500 feet of a school, public playground, church, public park or public library
Conditions covered

- AIDS; positive for HIV
- amyotrophic lateral sclerosis
- Alzheimer's disease
- Cancer
- chronic traumatic encephalopathy
- Crohn's disease
- Epilepsy/other seizure disorder
- Fibromyalgia
- Glaucoma
- hepatitis C
- IBS
- multiple sclerosis
- pain that is either chronic and severe or intractable
- Parkinson's disease
- PTSD
- sickle cell anemia
- spinal cord disease or injury
- Tourette's syndrome
- traumatic brain injury
- ulcerative colitis
Municipal legislatures can adopt legislation to prohibit or limit the number of retail dispensaries.

Townships can regulate location of retail dispensaries or prohibit them from being in unincorporated territories of township.
(Don’t) Take it to the Bank

- Financial institutions that do business with MM companies are exempted from Ohio’s criminal laws regarding funds derived from drug activity.

- Dept of Commerce is directed to make rules for a closed-loop system so registered patients and caregivers can make purchases at authorized dispensaries and retailers.
Other non-employment issues

**Tax:** Cultivation lands are to be taxed at fair market rate rather than CAUV

**OARRS:** Retail dispensaries must use state automated prescription reporting system when dispensing to registered patients and caregivers
Joint Effort: What happens now?

- Sub. H.B. 523 effective September 8, 2016
- Initial advisory committee will frame Medical Marijuana Control Program
- Department of Commerce will make rules, license cultivators, processors, and testing labs
- Board of Pharmacy will license dispensaries, and register patients and caregivers
- Medical Board will certify, regulate physicians
Initial request of $1.8 million to get Commerce and Pharm Board started, to cover costs of:

– Paying 14 advisory committee members
– Licensing dispensaries
– Staffing to develop rules and regs
– Registering patients and caregivers
– Initially operating the administrative functions
– Upgrading the online pharmacy tracking system
Next

- Possible interim ability to obtain MM through reciprocity agreements with other states?

- After rulemaking, cultivator and retailing licensing process will begin

- Medical certifications

Enforcement
What forms will be permissible in Ohio?
- Cannot be combustible (smoked)
- Oils
- Tinctures
- Transdermal patches
- Plant materials
- Edibles
- Other forms that may be permitted by regulations
CAVEAT: cannot be attractive to children
The role of the physician

- Physicians who are certified by the State Medical Board can recommend, NOT PRESCRIBE, medical marijuana.
Doctors

- No financial interest in growing marijuana,
- Cannot have lost medical license or have been convicted of certain crimes.
- Must attend at least 2 hours on diagnosing and treating conditions with medical marijuana.
EMPLOYMENT-RELATED POT-POURRI

- Safety
- Confidentiality
- Discrimination claims and other lawsuits
- Insurance concerns
H.B. 523 and Employment

The law does NOT:

- Prohibit an ER from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person because of that person’s use, possession or distribution of MM.
- Prohibit an ER from establishing a zero-tolerance drug policy.
Higher-ing challenges

- Finding enough qualified applicants who can pass pre-employment drug screens
- May cause/exacerbate:
  - increased absences, tardiness
  - Accidents, workers’ compensation claims
  - job turnover
Where the rubber hits the road:

DOT regs

- State legalization does not alter DEA status
- Testing mandated for pilots, truck drivers, bus drivers, etc.
- Consequences for failing to test include criminal sanctions
SAFETY IS JOB ONE

- Costs of ensuring safe workplaces continue to escalate, including due to risks such as distracted driving, increased driving time, faster production demands, etc.
- More injuries would result in increased workers’ compensation, unemployment, and litigation costs

Safety First
Legalizing medical marijuana could increase safety-related costs

- Costs of drug-testing applicants, employees
- Increased management training costs
- Increased need for supervision, oversight
Remember: drug testing identifies presence, not impairment
We’re on a weed-to-know basis

- ADA, O.R.C. §4112 limitations

- Law does not require accommodation. Even if it did, lack of knowledge about medical marijuana side effects makes accommodation difficult.

- Employers cannot verify whether employees are lawfully registered users.
LIABILITY FOR EMPLOYERS?

Physical Injuries To User Or Others:

– Injuries in manufacturing jobs or driving-related jobs are increased when employees are under the influence, even when they don’t appear impaired.

– Employers are concerned about injury to:
  • their employees
  • their transported goods
  • third parties (the public)
Rocky Mountain Lows

THE LEGALIZATION OF MARIJUANA IN COLORADO
THE IMPACT

Volume 3
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Rocky Mountain High Intensity Drug Trafficking Area
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LIABILITY FOR EMPLOYERS?

Workplace Regulation / Citations

- General duties clause
- Potential effect on injury and OSHA citations?
Could impact workplace policies on:

- Smoking
- Whether it can be consumed during break times (vaping is not prohibited)

Cannot be consumed in public.
The pot thickens…

- Will EPLI cover claims?
- Will carriers require zero-tolerance policy?
- Will carriers exclude claims involving acts occurring outside of work time?
- Will states ever be on the same page?

STAY TUNED for the next episode...
UNEMPLOYMENT

- The statute bars claims for unemployment benefits IF the employer has a clear policy that was violated, not merely for failing a drug test.
- Costs of contesting claims.
A positive test may support rejecting a claim, IF the employer has a policy prohibiting marijuana use, even if it is legally available medical marijuana.

Claims denials still implicate claims-related costs.
Let’s just take a **DEEP** breath

- Asking about illegal use is not prohibited
- Zero tolerance policies are permitted
- Testing is not prohibited
- Terminating is not prohibited
- Job descriptions should identify safety-sensitive aspects
- Multi-state employers: Know your **states’ laws**!
- Train managers and supervisors
- Educate employees about hazards of substance abuse (may be mandatory for Ohio BWC discount programs)