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Drug-free schools, colleges will feel new marijuana act

On Jan. 1, the Cannabis Regulation and Tax Act will go into effect, implementing sweeping changes surrounding the possession and use of marijuana in Illinois. Illinois schools and public colleges must navigate this new law in addition to existing state and federal laws governing those entities as both educational institutions and public employers.

The principal provisions of the act (Public Act 101-0027) — and those receiving the most public attention — allow Illinois residents age 21 and older to legally possess up to 30 grams of cannabis flower, 5 grams of cannabis concentrate and 500 milligrams of THC in a cannabis-infused product.

The act also authorizes the state to issue licenses for growers, processors and retailers of cannabis and to tax the sale of cannabis products. The new law provides an estimated 770,000 people in Illinois with eligibility for expunction of their marijuana-related convictions, according to the Marijuana Policy Project.

Under the new act, all Illinois employers may still adopt and maintain reasonable and nondiscriminatory zero-tolerance drug-free workplace policies, including policies preventing possession and use in the workplace and working under the influence (Section 10-50(a)).

To this end, the act lays out

specific and articulable symptoms that an employer may use to determine if an employee is under the influence of cannabis. Employers may also maintain policies regarding drug testing of employees (Section 10-50(d)).

Public school districts and colleges are already required by law to be drug-free workplaces. The new act will not change this requirement. See Drug-Free Schools and Communities Act Amendments of 1989, 20 U.S.C. Section 1011i; Illinois Drug-Free Workplace Act, 30 ILCS 580/1, et seq.; Smoke Free Illinois Act, 410 ILCS 82/1, et seq.; and Cannabis Regulation and Tax Act, Section 10-35.

Illinois colleges and universities must continue to comply with federal laws such as the Drug-Free Schools and Communities Act Amendments of 1989, which generally require a college campus to be drug free (Section 10-35(d)). Further, the new act does not allow the public to violate the Smoke Free Illinois Act (Section 10-35(a)(4)), which requires all public places, including educational buildings, to be smoke free.

In addition, the Illinois School Code requires that school districts perform a criminal history background check on all job applicants for prior convictions including drug offenses under the Cannabis Control Act. 105



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ILCS 5/10-21.9 and 105 ILCS 5/10-21B-80.

However, the School Code already excludes from its disqualifying provisions minor cannabis offenses which have been legalized by the new act: namely, possession under 30 grams of cannabis. See 105 ILCS 5/10-21B-80; Cannabis Regulation and Tax Act, Section 900-12; Criminal Identification Act, 20 ILCS 2630/5.2.

Therefore, the legalization of the use and possession of certain amounts of marijuana under the act should not materially disrupt criminal history background check

processes under the School Code.

While Illinois schools and colleges will remain drug-free workplaces, the act makes pertinent changes to the Illinois Right to Privacy in the Workplace Act, governing conduct outside of work (Section 900-50; 820 ILCS 55/5).

The Right to Privacy in the Workplace Act prevents employers from taking employment action against an employee or job applicant for the use of lawful products outside of the workplace and during nonworking hours (such as drinking alcohol).

The act amends the privacy act to state that it is illegal “for an employer to refuse to hire or to discharge any individual ... because the individual uses lawful products off the premises of the employer during nonworking and noncall hours,” including legal use of marijuana under the act.

Obviously, this appears to conflict with other drug-free and background-check requirements for schools and colleges as employers. However, the amended privacy act only applies “except as otherwise provided by law, including [S]ection 10-50 of the [act].”

As discussed above, Section 10-50 of the act allows employers to maintain drug-free workplace policies and drug-testing policies in accordance with other state and federal laws.

A critical element to watch for regarding future developments is the ability of employers to successfully establish that an employee was under the influence of marijuana while at work, even if consumed during nonwork hours.

While the act identifies symptoms to observe and report, it is possible that employees disciplined for being under the influence may challenge such actions by citing the privacy act and claiming they ingested the marijuana during nonwork hours.

The likely battleground will

be what standard will be applied in determining whether someone is currently under the influence of previously consumed marijuana.

The act contains interesting and beneficial provisions applicable to community colleges in Illinois. Article 25 of the act institutes the Community College Cannabis Vocational Pilot Program.

Under the program, for the 2021-22 academic year, community colleges awarded licenses by the state will be able to offer students courses and a Career in Cannabis certificate to prepare students for a career in the legal cannabis

industry.

The Illinois Department of Agriculture will develop and issue rules by Jan. 1, regulating the criteria for colleges seeking licenses to participate in the program.

As a further benefit to Illinois community colleges, a medical cannabis dispensing organization seeking issuance of certain types of licenses shall be required by the act to identify in their license application whether they will contribute a percentage of sales (up to \$100,000) to the Cannabis Business Development Fund or make a grant in the same

amount to a cannabis industry training or education program at an Illinois community college.

The new Cannabis Regulation and Tax Act, takes effect on Jan. 1. As employers, public school districts and colleges are already governed by a network of drug-free state and federal laws.

However, the cannabis landscape is shifting outside of those laws and school districts and colleges will need to stay abreast of legal developments impacting the ability to respond to their employees' use of soon-to-be lawful products.