

California businesses and employers should consider their workplace and employee policies to account for passage of Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, which legalizes adult use of marijuana without a medical prescription. *Employers and businesses should have an attorney review their workplace policies in light of the voters' approval of Proposition 64 to ensure compliance with this new California law.*

### **BOTTOM LINE: KEY OUTCOMES FROM PROP. 64 UNDER CALIFORNIA LAW**

- Legalizes the purchase, transportation, possession, consumption, and sharing of small amounts of marijuana – up to one ounce of marijuana, or 8 oz. of concentrate – by adults 21 or older.
- Permits an individual to cultivate an enclosed, discreet garden of up to six plants, and process and retain the entire harvest.
- Allows smoking of marijuana in private homes or in businesses specifically licensed for on-site marijuana consumption.
- Creates a statewide regulatory system.
- Allows localities wide latitude in licensing and zoning of marijuana -related businesses
- Reduces penalties for minors and offenders
- Imposes new state taxes on growing and selling marijuana, and specifies the use of those tax revenues
- Does not interfere with the rights previously granted under the Medical Use of Marijuana Initiative or the Compassionate Use Act

### **CONTINUED FEDERAL ILLEGALITY**

- Under the Federal Controlled Substances Act, marijuana remains an illegal Schedule I drug. (21 U.S.C. §812(c))
- Federal law makes it a crime to grow, sell, or possess marijuana. (21 U.S.C. § 841(a)(1); 21 U.S.C. § 812, Schedule I (c), (d))
- Possession of marijuana for personal use is a federal misdemeanor. (21 U.S.C. § 844a(a))
- Manufacture, distribution, possession with intent to distribute, or attempts and conspiracies to do so involve penalties that vary with the type and quantity of drug and other factors. (21 U.S.C. §§ 841(b), 846 & 960(b))
- “Aiding and abetting” a violation of federal marijuana laws is a crime. (U.S. v. Gaskins)
- The Department of Justice has stated that enforcement of federal marijuana law against individuals who are in “clear and unambiguous compliance” with state medical-marijuana laws is a low priority, but this guidance is subject to change and does not carry the weight of binding legal authority.

### **LIMITED IMPACT ON EMPLOYERS AND NON-MARIJUANA BUSINESSES**

- Landlords and business owners may prohibit smoking or cultivation of marijuana on their property.

- Employers are not required to permit marijuana use or provide accommodations for marijuana users.
- Proposition 64 explicitly allows public and private employers to enact and enforce workplace policies pertaining to marijuana. Proposition 64 did not create any new employee rights or prohibit discrimination against employees who use marijuana.
- In California, employers can do pre-employment drug testing if they screen all applicants. (Loder v. City of Glendale)
- Employees can only be tested for marijuana use if there is a reasonable suspicion they are under the influence, after an accident, or if it is required under federal law. (Random testing is generally only allowed for safety-sensitive jobs.)
- Employers can refuse to hire an applicant who tests positive for marijuana in a pre-employment drug test and fire workers who are tested for permissible reasons and fail the test. (Ross v. Ragingwire Telecomm., Inc.)
- An employer can refuse to provide reasonable accommodation for marijuana, even if the use is for medicinal purposes and is legal under California law. (Ross v. Ragingwire Telecommunications Inc.)
- Employers can continue to prohibit possession or use of marijuana on their premises or while an employee is on duty, as well as prohibit employees from being under the influence.
- Employers may continue to discipline employees found to be in possession or under the influence of marijuana while on work premises or on duty.
- Where California law prohibits or restricts tobacco smoking, the same rules apply to smoking marijuana.

### WHAT EMPLOYERS SHOULD DO

- Employers should review their alcohol and drug policies in consultation with an attorney to ensure that company and workplace policies specifically address marijuana – which may no longer fall under existing policy definitions, like “illegal drugs.”
- Employers may wish to communicate policies that specifically address marijuana to employees so employees understand legal standards and employer expectations post-legalization.
- If an employer drug tests employees, it also may wish to address the circumstances when it may conduct such testing, or reserves the right to do so.
- Workplace drug and alcohol policies should clearly specify barred conduct and emphasize that the use, possession, and working under the influence of marijuana are explicitly prohibited.

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