

Starting the Decade on a High: Illinois' Recreational Cannabis Law Goes Into Effect

On January 1, 2020, the Illinois Cannabis Regulation and Tax Act (the Act) went into effect. The Act legalizes recreational use of cannabis in Illinois for U.S. Citizens age 21 and older. Illinois is the eleventh state to legalize recreational cannabis.

The Act imposes different possession standards on Illinois and non-Illinois residents. Illinois residents who are 21 or older can possess a maximum of 30 grams of "cannabis flower" (the dried substance often referred to as "weed"), 5 grams of cannabis concentrate (a honey-like substance with high levels of tetrahydrocannabinol - THC- typically used in an e-cigarettes or vaporizers) and 500 milligrams of THC in edibles (food, commonly candy or sweets, that contains THC) at 100 grams per edible. In contrast, a non-Illinois resident, such as a Wisconsin resident, can only possess up to 15 grams of weed, 2.5 grams of cannabis concentrate, and 250 milligrams of THC edibles at 50 grams per edible in Illinois. Non-U.S. citizens are prohibited from using recreational cannabis.

The Act allows Illinois cities and towns to decide whether to allow recreational cannabis dispensaries in their jurisdictions. Colleges and universities may also ban recreational cannabis from their campuses and dorms. Unlike states like Colorado, which allows Colorado residents 21 and older to grow up to six plants in their homes for personal use, Illinois does not allow individuals to grow cannabis for recreational purposes, but state residents who are prescribed cannabis for medical purposes may grow up to five plants in their home.

The Act also permits Illinois employers to have and enforce drug-free workplace policies. A recent amendment to the Act affirms that Illinois employers may continue pre-employment drug testing, and, depending on the scope of the employer's policy, withdraw offers of employment to new hires who test positive for cannabis use. Employers may also discipline or terminate current employees who violate a drug-free policy based on: (1) a good faith belief that an employee used or possessed cannabis at work; (2) a good faith belief that an employee was impaired by or under the influence of cannabis while at work; or (3) a failed drug test.

Due to the imprecise nature of drug testing, an employee could be terminated for legally using recreational cannabis outside the workplace. For instance, an employee who uses recreational cannabis on Saturday could test positive for

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cannabis the following Tuesday even though the employee no longer feels the physical effects from the cannabis use. The drug test exception could come into conflict with Illinois' Right to Privacy in the Workplace Act, which prevents employers from refusing to hire, terminating, or otherwise disadvantaging employees for off-duty use of "lawful products," which now includes recreational cannabis.

Questions about how recreational cannabis in Illinois could affect your business? Contact Shannon Toole or any attorney in Reinhart's Cannabis Law group.

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