

A Blunt Analysis of Recreational Marijuana and Arizona Employment Law

Legal Alert

November 4, 2020

On November 3, 2020, Arizona voters puffed and passed Proposition 207, the “Smart and Safe Arizona Act” (the “Act”), which will legalize, effective on or before April 5, 2021, the limited possession and use of recreational marijuana for Arizona adults age 21 years or older. The Act also allows Arizona residents with green thumbs to personally cultivate up to six marijuana plants in their residences if the plants are within a lockable enclosed area and beyond public view. All marijuana sales will be subject to a 16 percent tax, in addition to the existing transaction privilege tax and use tax, with revenues divided between community college districts; municipal police, sheriff, and fire departments; fire districts; the state’s Highway User Revenue Fund, and a new Justice Reinvestment Fund. And anyone convicted of certain marijuana-related crimes involving possession, consumption, cultivation, and transportation may petition for expungement of their criminal record starting on July 12, 2021. All in all, not a bad day for recreational marijuana proponents (and, probably, snack food purveyors?).

But what is missing from the Smart and Safe Arizona Act? The Act contains no employment protections for the recreational marijuana user. An employer may maintain a drug-and-alcohol-free workplace and may implement workplace policies restricting the use of marijuana by employees or prospective employees. Thus, as it stands, only the Arizona Medical Marijuana Act (“AMMA”) provides employment protections for valid AMMA card holders. So, Arizona employers arguably may continue to discriminate against recreational marijuana users who are **not** AMMA card holders by refusing to hire, disciplining, and discharging marijuana users. However, before making any employment decisions involving marijuana, Arizona employers should consider the following:

- Does the company have an existing drug testing policy that complies with the Arizona Drug Testing Statutes?
- Does that drug testing policy clearly identify proper (and defensible) testing methods for specific categories of testing?
- Does the employee or job candidate have an AMMA card? If so, is it current and verified?
- Is the company primarily concerned with active impairment (and related safety risks) or prior use of marijuana during non-working hours?
- Is the company conducting the correct drug tests that will expose active THC metabolites which can lead to impairment and safety risks?
- What other impairment factors (listed in the Arizona Drug Testing Statutes) are present and how does the company confirm and document them?

Before employers collectively throw up their hands and reach for the edibles, contact us. The attorneys at Farhang and Medcoff are well-versed in Arizona marijuana law including advising employers and employees on these types of imperative questions.

Roscoe J. Mutz Esq. is a Partner at Farhang & Medcoff, focusing in the areas of commercial litigation, employment law, and medical marijuana. Roscoe also advises employers regarding compliance issues, including conducting internal investigations and audits regarding Form I-9 compliance.

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