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## Cannabis Use: Employers Should Update Their Company Handbook

Laws surrounding cannabis are anything but uniform. At the federal level, cannabis is a controlled substance for both adult-use and medicinal purposes. However, states have begun taking a far more progressive approach to cannabis legalization. Jurisdictions including Delaware, the District of Columbia, Georgia, New Jersey, New York, Pennsylvania, Virginia, and West Virginia have legalized medicinal cannabis. And, the growing number of states which have legalized adult-use, including California, Oregon, Colorado, Massachusetts, Illinois, the District of Columbia, New Jersey, and New York, has expanded rapidly over the last 18-24 months. As this shift has occurred across the nation to legalize medicinal and adult-use cannabis, employers must consider how these changes will impact the workplace.

First, employers must recognize the protection afforded to employees with medicinal cannabis needs under applicable state laws. **HALEIGH'S HOPE ACT**, adopted by the state of Georgia, legalized medicinal cannabis for individuals with qualifying medical conditions. However, this Act does not require an employer to accommodate the use of medicinal cannabis, nor does it prohibit an employer from adopting a zero-tolerance policy toward any amount of cannabis in an employee's system. In Pennsylvania, an employer may not discriminate against an individual because he has a medicinal cannabis license; however, Pennsylvania's statute does not require employers to accommodate the use of medicinal cannabis in the workplace, nor does it limit an employer's ability to discipline an employee for working under the influence. Regardless of applicable state law, employers should remain aware that employees with medicinal cannabis needs might bring claims against them for discrimination based on a disability protected by the **AMERICANS WITH DISABILITIES ACT (ADA)**. For example, if an individual uses medicinal cannabis to treat epilepsy, that individual may bring a discrimination claim against the employer since epilepsy is protected by the ADA.

Next, employers must consider the protection afforded to adult-use under applicable state laws. In New York, an employer may not refuse to hire or otherwise discriminate against applicants or employees for adult-use outside the workplace. However, employees who present to work impaired are not protected from adverse employment action. In the District of Columbia, adult-use laws do not affect the ability of an employer to establish and enforce policies restricting use by employees, nor do they prevent an employer from taking adverse employment action based upon a positive drug test for cannabis. Note that states that do not recognize adult-use may offer limited forms of protection. For example, employers in Virginia are prohibited from requiring applicants to disclose information regarding a criminal charge, conviction, or arrest for cannabis possession.

Best practices for employers include adopting policies governing medicinal and adult-use cannabis in the workplace, where legalized. For example, an employer in Pennsylvania should include a policy in the company handbook outlining Pennsylvania's statute, describing the protection afforded to medicinal cannabis users, and providing information about company protocol related to workplace use of cannabis. Because adult-use is not legal in Pennsylvania, a separate policy for it is not necessary. On the other hand, employers in states that recognize adult-use may consider drafting a policy that complies with applicable state law. For example, an employer in New York may include an adult-use policy outlining the employer's commitment not to discriminate against those employees who partake in adult-use outside of work, as well as discipline and discharge protocol for employees who are found to be under the influence at the workplace. Such policies would be similar to, if not the same as, those addressing alcohol inebriation in the workplace.

For help with updating your Employee Handbook, please contact one of the attorneys in our **Employment Law Group** at [EmploymentLaw@c-wlaw.com](mailto:EmploymentLaw@c-wlaw.com) or **1-888-488-2638**.