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Navigating Amendment 3: What Employers Need to Know



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AGENDA



1. Amendment 3
2. Tricky Issues
3. Multi-state Issues & Examples
4. Intersection with Federal Law

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Amendment 3

Legalizes recreational use of marijuana

- **Must be 21 or older**

Clarifies employer obligations towards the medical use of marijuana

- **Prohibits discrimination for certain medical use**
- **But no obligation to accommodate the use of marijuana in the workplace**

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New Anti-Discrimination Provision

Employers may not discriminate in:

- 1. hiring decisions;**
- 2. termination decisions; or**
- 3. conditions of employment**

against a person with a valid identification card for:

- 1. being a medical marijuana cardholder;**
- 2. using medical marijuana (off work premises, during non-working hours); or**
- 3. returning a positive drug test for marijuana components.**

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Who is a “Person” and What is a “Valid Identification Card?”

“Person”

- Employees AND applicants

“Valid Identification Card”

- Medical marijuana identification card
- Likely does not need to be a card issued in Missouri
- Substantially similar cards issued in another state likely qualify

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Exceptions to the Rule....

The anti-discrimination clause does not apply if the lawful use of marijuana:

1. affects the person's ability to perform job-related employment responsibilities;
2. affects the safety of others; or
3. conflicts with a "bona fide occupational qualification" reasonably related to the person's employment.

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No Duty to Accommodate Medical Use at Work

Anti-discrimination clause does not protect the:

1. use;
2. possession; and/or
3. being under the influence of marijuana

while the employee is:

1. on workplace premises; or
2. during the employee's hours of employment.

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In Other Words....

Nothing in Amendment 3 permits an employee to bring a claim against their employer for wrongful discharge, discrimination, etc. based on the employer:

- (1) prohibiting the employee from being under the influence of marijuana while at work; or**
- (2) disciplining the employee for working or attempting to work while under the influence of marijuana.**



No Requirements Imposed on Employers for...

Recreational Use

- No protections for recreational use
- No direct impact on zero-tolerance policy for recreational use

Drug Testing

- Does not mandate or curtail an employer's decision to require drug testing

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Tricky Issues

How do we know whether an employee is working under the influence of marijuana?



How do I know whether an employee has a valid medical card such that the anti-discrimination clause applies to their use?



What about “safety sensitive” positions? And what is a “bona fide occupational qualification”?



Other State Statuses

Medical	Medical & Recreational	None
Arkansas	Illinois	Nebraska
Iowa		Kansas
Oklahoma		Tennessee
Kentucky (Limited)		

Scenario #1

Your employee, David, lives in Kansas but works in Missouri. While you don't have any suspicion that David has been under the influence of marijuana while at work, he tests positive for marijuana in a random screening. Your company prohibits any use of controlled substances, including marijuana.

What can you do?



Scenario #2



Now pretend David works remotely full-time from his home in Kansas when he tests positive for marijuana.

Is David protected under Amendment 3?

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Scenario #3

You recently made a conditional offer of employment to an applicant who lives in Colorado but plans to relocate to Missouri upon acceptance of the position. When drug tested, the applicant tests positive for marijuana. You come to learn that the applicant has a medical marijuana card issued by the State of Colorado.

What should you do? Does the out-of-state medical card trigger any obligations under Amendment 3?



Scenario #4



Your employee is injured on the job.

Should she receive a drug test?

If she is tested, what if the test comes back positive for marijuana?

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Federal Issues: Amendment 3 & the Drug-Free Workplaces Act

- The DFWA requires a recipient of a federal contract greater than \$100,000 or a grant of any amount to prohibit the use of controlled substances in the workplace.
- The DFWA does not expressly require a recipient to conduct drug testing of its employees.
- There may be other standards in government contracts.

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Takeaways

- **Re-visit current drug testing policies and practices**
 - Including handbooks and new-hire procedures
 - Look at phrases like “illegal drugs”
- **Train management on procedures and differences between recreational and medicinal use**
- **Consider training on signs of impairment**
 - Use caution with “under the influence”
- **Maintain confidential medical records**

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QUESTIONS?

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