

December 20<sup>th</sup>, 2018

## Utah's New Medical Marijuana Law

On December 3, 2018, Utah lawmakers passed the Utah Medical Cannabis Act (the "Act"). This legislation replaces Ballot Proposition 2, which was approved by Utah voters in the November 2018 general election.

The Act directs the Utah Department of Health (UDOH) to issue medical cannabis cards to patients, register medical providers who wish to recommend medical cannabis treatment for their patients and license medical cannabis pharmacies. The Act requires UDOH to implement the above no later than March 1, 2020.

According to the UDOH, medical cannabis treatment will be allowed for patients with certain qualifying medical conditions. While UDOH will begin accepting applications for medical cannabis cards by March 1, 2020, prior to January 2021, patients meeting certain criteria outlined in the Act may legally possess medical cannabis without a medical cannabis card.

Physicians, Advanced Practice Registered Nurses and physician assistants who are licensed to prescribe a controlled substance will be allowed to recommend medical cannabis treatment for their patients. Providers will be required to register as a qualified medical provider through the UDOH.

What does Utah's new medical marijuana law mean for employers? Nothing in the Act requires private employers to accommodate use of medical marijuana in the workplace. (The Act does require that public employers treat an employee's medical marijuana use in the same way it would treat employee use of opioids or opiates.) And while the medical condition underlying an employee's use of medical marijuana may constitute a disability within the meaning of the Americans with Disabilities Act (ADA), under the ADA, individuals engaged in illegal drug use are specifically excluded from the definition of a "qualified individual with a disability." Current federal law classifies medical marijuana use as illegal drug use. Thus, until federal law classifying marijuana as a Schedule 1 controlled substance changes, an employer does not have to accommodate the use of medical marijuana under the ADA.

Based on the language of the Act and existing law, it appears Utah employers can still enforce drug-free workplace laws and, if deemed appropriate, take action against an employee who tests positive for marijuana use at work. This is particularly true for employers who are subject to drug testing requirements under federal law, such as requirements imposed by the United States Department of Transportation ("USDOT"), as USDOT regulations and drug testing requirements do not exempt medical marijuana use.

Nor does the Act appear to have any impact on employer health plans. The Act makes clear that neither insurance products nor employer health plans need cover the use of medical marijuana. While more clarity is always welcome, currently it does not appear the Act imposes any new obligations on Utah employers. Stay tuned for further developments.

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