

CLIENT ALERT

Legalized Marijuana in D.C. – Implications for Area Employers

Feb.27.2015

Last November, D.C. voters overwhelmingly approved a referendum legalizing marijuana. The initiative, known as Proposition 71, became effective on February 26, 2015. Proposition 71 raises numerous questions, particularly in light of the fact that marijuana possession remains illegal under the federal Controlled Substances Act. Some of the open questions are relevant to private sector employers with operations in D.C.

Guidance issued by the D.C. government states that Proposition 71 permits individuals 21 years of age or older to possess up to two ounces of marijuana and to consume it on private property. Individuals may also grow, within their primary residence, up to six marijuana plants, no more than three of which are mature. The initiative also permits individuals to transfer one ounce or less of marijuana to another person as long as: (1) no money, goods, or services are exchanged; and (2) the recipient is 21 years of age or older.

Proposition 71 is the latest example of a national state-level trend to legalize marijuana. Four states and the District of Columbia now permit recreational use. 23 states have legalized marijuana for certain medical uses. These laws reflect a significant change in public opinion about marijuana; one recent poll suggests that more than 50 percent of Americans nationwide favor full legalization. Yet legalization remains controversial in many circles, and not only because it is still illegal.

The D.C. government's guidance does not directly address the issue of federal law, other than to state that marijuana cannot be used on federal property within the District.

As in other jurisdictions that have legalized marijuana, employers with operations in D.C. should pay attention to this development. Companies with zero tolerance programs including random drug testing have faced litigation from individuals who test positive for marijuana when there was no evidence of on the job impairment. Nothing in Proposition 71 directly or indirectly authorizes use of marijuana in the work place; neither does the initiative condone impairment at work. Some employers may decide to treat marijuana in the same way as alcohol. Companies that have a zero tolerance policy regarding the use of illegal drugs should consider making appropriate modifications to their substance abuse policies. Companies holding federal government contracts and others who are covered by the federal Drug Free Workplace Act should take care to understand their specific obligations.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Thomas P. Gies

Partner – Washington, D.C.

Phone: +1 202.624.2690

Email: tgies@crowell.com

Kris D. Meade

Partner – Washington, D.C.

Phone: +1 202.624.2854

Email: kmeade@crowell.com