

## Legislative Update APRIL 2021\*

*Disclaimer: This Legislative Update contains general information compiled as a service for MVSHRM members. MVSHRM cannot accept responsibility for any errors or omissions or any liability resulting from the use or misuse of any such information. For specific legal advice, please contact counsel. Thank you for your understanding.*

### **NEW YORK LEGALIZES RECREATIONAL CANNABIS & EXPANDS MEDICAL USE**

Governor Cuomo signed legislation on March 31, 2021 to legalize adult-use cannabis for recreational purposes and to expand the medical use of cannabis in New York State. This law is named the New York State Cannabis/Marijuana Regulation and Taxation Act. According to a press release issued by the Governor's Office, this law "will allow people with a larger list of medical conditions to access medical marijuana, increase the number of caregivers allowed per patient, and permit home cultivation of medical cannabis for patients ... Unlawful discrimination will be prohibited and workplace safety protections will be implemented." Also, "the following conditions apply to growing cannabis at home and personal possession of cannabis outside the home:

Personal possession outside home: up to 3 ounces cannabis and 24 grams of cannabis concentrate;  
Home possession: amends limits of what is permitted in the home, which must be kept in a secure location away from children;

Home grow (permitted under the law subject to possession limits in 18 months after first adult-use sales begin for adult recreational use, and subject to regulations of the Medical Program being promulgated no sooner than 6 months): 3 mature plants and 3 immature plants for adults over 21; 6 mature plants and 6 immature plants maximum per household."

Employers need to be aware that employees who are certified for medical marijuana use must be accommodated like other individuals with disabilities under the New York Human Rights Law.

In addition, the new law amends Section 201-d of the New York Labor Law, which protects certain lawful off-duty activities by employees including the use of legal consumable products such as tobacco and alcohol. Section 201-d has now been amended to include cannabis. As a result, employers may not take an adverse employment action against an employee because of his or her legal use of marijuana prior to the beginning or after the conclusion of the employee's work hours, provided that such use takes place off the employer's premises and without use of the employer's equipment or other property. However, employees who are impaired while on the job will not necessarily be protected under Section 201-d if they show symptoms of impairment at work.

Additionally, marijuana remains on the federal government's list of controlled substances. Therefore, employers will not be required to take actions that "would cause the employer to be in violation of federal law or would result in the loss of a federal contract or federal funds."

---

\* MVSHRM's April 2021 Legislative Update is edited by Joseph A. DeTraglia, Esq., a labor and employment attorney with the Utica, New York law firm Joseph A. DeTraglia, Esq., P.C., who serves as MVSHRM's Legislative Committee Chairperson and as a Past President of the Oneida County Bar Association. He can be reached at 315-790-8822 or at JD@DeTragliaLawFirm.com.