

Legislative Update OCTOBER 2021*

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N.Y.S. DEPARTMENT OF LABOR ISSUES GUIDANCE AND FREQUENTLY ASKED QUESTIONS CONCERNING ADULTS' USE OF MARIJUANA IN THE WORKPLACE

In March 2021, New York State enacted legislation known as the Marijuana Regulation and Taxation Act (MRTA), which legalized adult-use cannabis for recreational purposes. In October 2021, the N.Y.S. Department of Labor issued a guidance document which includes Frequently Asked Questions concerning marijuana use in the workplace. This guidance document can be found here: <https://dol.ny.gov/system/files/documents/2021/10/p420-cannabisfaq-10-08-21.pdf>.

The MRTA amended Section 201-D of the New York Labor Law, which protects certain lawful off-duty activities including employees' use of legal consumable products such as tobacco and alcohol, to confirm that cannabis used in accordance with New York State law is also a legal consumable product. As a result, employers may not take an adverse employment action against an employee over 21 years of age 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.

Under the MRTA, however, employers are permitted to take adverse employment actions or prohibit employee conduct where:

- An employer was required to take employment action by state or federal statute, regulation, or ordinance, or other state or federal governmental mandate;
- The employer would be in violation of federal law;
- The employer would lose a federal contract or federal funding;
- The employee, while working, manifests specific articulable symptoms of cannabis impairment that decrease or lessen the employee's performance of his or her tasks or duties;
- The employee, while working, manifests specific articulable symptoms of cannabis impairment that interfere with the employer's obligation to provide a safe and healthy workplace as required by state and federal workplace safety laws.

Source: New York State Department of Labor

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