

CANNABIS REGULATION & TAX ACT UPDATE

The Cannabis Regulation and Tax Act legalized the use of recreational marijuana for all adults in Illinois effective January 1, 2020.

What does this mean for CIB employers? Business owners and managers need to understand what the law does and does not allow. The question of drug policies and workplace regulation of usage is detailed in Section 10-50 Employment; employer liability. The section is below for your review and to use as a reference if you are in the process of evaluating and revising your drug-free workplace policies.

Here are some articles on marijuana in the workplace that you may find useful:

- Jackie Pirone: Marijuana in the Workplace. *Occupational Health & Safety*. Retrieved from <https://ohsonline.com/articles/2019/03/01/marijuana-in-the-workplace.aspx>
- Tamara Lytle: Marijuana and the Workplace: It's Complicated. *SHRM HR Magazine*. Retrieved from <https://www.shrm.org/hr-today/news/hr-magazine/fall2019/Pages/marijuana-and-the-workplace-its-complicated.aspx>
- Melissa M. Ferrara and Meghan O.: New marijuana and court cases continue to provide inconsistent guidance for employers: a summary of recent developments in Illinois, Nevada, New Jersey and Michigan. *Reed Smith Employment Law Watch*. Retrieved from <https://www.employmentlawwatch.com/2019/06/articles/employment-us/new-marijuana-laws-and-court-cases-continue-to-provide-inconsistent-guidance-for-employers-a-summary-of-recent-developments-in-illinois-nevada-new-jersey-and-michigan/>

CIB of AGC will continue to provide information on the Cannabis Regulation and Tax Act and its impact on the trades industry as it becomes available.

Cannabis Regulation and Tax Act (410 ILCS 705/10-50)

Sec. 10-50. Employment; employer liability.

(a) Nothing in this Act shall prohibit an employer from adopting reasonable zero tolerance or drug free workplace policies, or employment policies concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace or while on call provided that the policy is applied in a nondiscriminatory manner.

(b) Nothing in this Act shall require an employer to permit an employee to be under the influence of or use cannabis in the employer's workplace or while performing the employee's job duties or while on call.

(c) Nothing in this Act shall limit or prevent an employer from disciplining an employee or terminating employment of an employee for violating an employer's employment policies or workplace drug policy.

(d) An employer may consider an employee to be impaired or under the influence of cannabis if the employer has a good faith belief that an employee manifests specific, articulable symptoms while

working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operating equipment or machinery; disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property; disruption of a production or manufacturing process; or carelessness that results in any injury to the employee or others. If an employer elects to discipline an employee on the basis that the employee is under the influence or impaired by cannabis, the employer must afford the employee a reasonable opportunity to contest the basis of the determination.

(e) Nothing in this Act shall be construed to create or imply a cause of action for any person against an employer for:

(1) actions taken pursuant to an employer's reasonable workplace drug policy, including but not limited to subjecting an employee or applicant to reasonable drug and alcohol testing, reasonable and nondiscriminatory random drug testing, and discipline, termination of employment, or withdrawal of a job offer due to a failure of a drug test;

(2) actions based on the employer's good faith belief that an employee used or possessed cannabis in the employer's workplace or while performing the employee's job duties or while on call in violation of the employer's employment policies;

(3) actions, including discipline or termination of employment, based on the employer's good faith belief that an employee was impaired as a result of the use of cannabis, or under the influence of cannabis, while at the employer's workplace or while performing the employee's job duties or while on call in violation of the employer's workplace drug policy; or

(4) injury, loss, or liability to a third party if the employer neither knew nor had reason to know that the employee was impaired.

(f) Nothing in this Act shall be construed to enhance or diminish protections afforded by any other law, including but not limited to the Compassionate Use of Medical Cannabis Program Act or the Opioid Alternative Pilot Program.

(g) Nothing in this Act shall be construed to interfere with any federal, State, or local restrictions on employment including, but not limited to, the United States Department of Transportation regulation 49 CFR 40.151(e) or impact an employer's ability to comply with federal or State law or cause it to lose a federal or State contract or funding.

(h) As used in this Section, "workplace" means the employer's premises, including any building, real property, and parking area under the control of the employer or area used by an employee while in the performance of the employee's job duties, and vehicles, whether leased, rented, or owned. "Workplace" may be further defined by the employer's written employment policy, provided that the policy is consistent with this Section.

(i) For purposes of this Section, an employee is deemed "on call" when such employee is scheduled with at least 24 hours' notice by his or her employer to be on standby or otherwise responsible for performing tasks related to his or her employment either at the employer's premises or other previously designated location by his or her employer or supervisor to perform a work-related task.

(Source: P.A. 101-27, eff. 6-25-19; 101-593, eff. 12-4-19.)