



## How Marijuana Laws Affect Workplace Policies for Municipalities in Michigan

Laura J. Genovich

*Foster Swift Municipal Law News*

March 22, 2019

In November 2018, Michigan voters passed Proposal 1, pursuant to which Michigan became the latest state to legalize marijuana for adult recreational use. The new law, codified as the Michigan Regulation and Taxation of Marihuana Act (the "Act"), provides that adults age 21 and older can possess up to 2.5 ounces of marijuana on their person or up to 10 ounces in their home. Adults can also grow (but not sell) up to 12 plants in their home for personal use, and give away up to 2.5 ounces of marijuana to anyone 21 and older.

Michigan municipalities play a key role in the implementation of the Act. The Act created a licensing and regulatory framework for commercial marijuana establishments, such as growers, retailers, and transporters, and municipalities were given the power to completely prohibit marijuana establishments within their boundaries, limit the number of permitted establishments, and regulate any permitted establishments. However, municipalities cannot prohibit the use of marijuana.

While many Michigan municipalities have their hands full working through ordinances and approvals related to commercial marijuana establishments within their jurisdictions, there is another important marijuana-related legal issue that municipalities must grapple with:

What effect does the legalization of recreational marijuana use have on workplace policies?

Like private-sector employers, municipalities should consider the implications of the Act in light of their workplace rules and regulations.

### **Does the Act Require Municipalities to Alter Workplace Policies to Accommodate Marijuana Use?**

The legalization of recreational marijuana does not fundamentally change the way Michigan municipalities, or other Michigan employers, must treat marijuana use in the workplace.

---

#### **AUTHORS/ CONTRIBUTORS**

Laura J. Genovich

---

#### **PRACTICE AREAS**

Employment Law

Employment Litigation

Municipal & Public Entity Law



Specifically, the new law provides that:

“This Act does not require an employer to permit or accommodate conduct otherwise allowed by this act in any workplace or on the employer’s property. This act does not prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while under the influence of marijuana.”

Accordingly, an employer can continue to prohibit the possession, distribution, manufacture, and/or consumption of marijuana, in any form, at work.

In addition, the Act does not force employers to alter hiring, discipline, and firing practices:

“This Act does not prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person’s violation of a workplace drug policy or because that person was working while under the influence of marijuana.”

In short, municipal employers can enforce workplace drug-free policies—and they should. Indeed, the decision by Michigan voters to legalize recreational marijuana use does not change the fact that there are many good reasons to maintain a drug-free workplace, including the following:

- While recreational marijuana use is now legal under Michigan law, it remains illegal under federal law.
- Federal contractors and grantees may be subject to the Drug-Free Workplace Act of 1988, which requires a drug-free workplace as a condition of receiving a contract or grant from the federal government.
- Studies have shown that marijuana use has been linked to an increase in job-related accidents and injuries, and a decrease in productivity.
- Because marijuana use may increase workplace accidents and injuries, permitting its use may lead to an increase in workers’ compensation and liability claims.

Finally, while it’s clear that a municipality may enforce a drug-free policy that includes a prohibition on marijuana use in the workplace, municipalities may also enforce prohibitions on marijuana use by non-employees in public spaces. The Act does not authorize the use of marijuana in a public place, which includes both smoking and edible consumption in parks, streets, libraries, city halls, and other public areas. The Act carves out an exception to this rule, which is that:

“[A] public place does not include an area designated for consumption within a municipality that has authorized consumption in designated areas that are not accessible to persons under 21 years of age.”

Accordingly, a municipality may designate an area in a public place, such as a park, where marijuana consumption is permitted, but access must be limited.

### **Issues Municipalities Should Consider When Considering New Policies**





There are a number of issues that municipalities should consider when creating new workplace policies in light of the Act. Workplace drug-free policies are not “one size fits all.” Every employer should think carefully about what will be permitted (or not), and consult with legal counsel to ensure that whatever policies are created or modified are in accordance with the law.

For example:

- A workplace drug policy should make clear how using, possessing, or being under the influence of marijuana will impact employment, despite the new law.
- If applicable, be clear that off-duty marijuana use may affect employment.
- Educate employees (new and old) on your policy, because employees could mistakenly believe that new laws allow them to use or possess marijuana at work.
- Educate HR professionals/managers to ensure proper and consistent enforcement of policy.
- Determine whether your marijuana policy will be zero-tolerance or will only impact those who are under the influence.
- If “under the influence” is your standard, then define it, because this term is not defined in the Act.
- Determine when and how you will test for drug use, if at all.
- Train managers to observe and identify signs of employees being under the influence.
- Apply your policy in a consistent and non-discriminatory manner to avoid claims of unlawful discrimination.

Public and private sector employers in Michigan are in the early stages of trying to adapt to fast developing legal changes regarding marijuana use. It seems that every week there are new headlines about changes in the scope and implementation of both medical and recreational marijuana laws in the state.

Nevertheless, it’s incumbent upon employers to craft policies that promote healthy, productive workplaces within the confines of the legal and regulatory landscapes. If you have concerns about your municipality’s ability to regulate marijuana in the workplace, please contact Laura Genovich at 616.726.2238 or at [lgenovich@fosterswift.com](mailto:lgenovich@fosterswift.com).