

# THE LAW OFFICES OF ALEX W. CRAIGIE

*Employment law, made simple.*

## December 12, 2016 Employment Law Bulletin

### What Legalizing Recreational Marijuana Means for California Employers

Among the major issues decided by California voters this past November was Proposition 64, the Adult Use of Marijuana Act, which legalized recreational use of marijuana by adults. While our state has permitted limited marijuana possession and use for medical reasons for roughly 20 years, expanding legalization to recreational use could further compound what may already seem a murky area for California employers.

This Bulletin aims to help employers understand the new law and offers guidance as to how to deal with challenges employers may face.

#### Understanding Proposition 64

Proposition 64 legalizes possession and recreational use of up to 28.5 grams of marijuana and up to 8 grams of concentrated marijuana for adults 21 years old and over. Adults are also permitted to grow up to six marijuana plants at home in a locked area that is not visible from a public place. The law also imposes a 15% excise tax on marijuana sales and establishes a regulatory framework for the sale of marijuana.

However, marijuana remains an illegal Schedule I substance under the federal Controlled Substances Act. Even under California law, smoking or ingesting marijuana in public will remain unlawful, as will smoking or ingesting marijuana in places where smoking tobacco also is prohibited. Similarly, driving under the influence of marijuana remains illegal.

#### Does Proposition 64 Limit an Employer's Power to Prohibit Marijuana?

No. The new law expressly says that nothing in the statute should be construed to affect the “rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees...”

Therefore, even with the passage of Proposition 64, employers may continue to prohibit use, possession and impairment at work. In fact, certain employers are *required* to maintain a “drug-free” workplace, and the new law does nothing to change this. These include employers contracting with the government or who engage in commercial transportation.

California employers may continue to conduct pre-employment drug testing of all applicants before hire and deny employment if the drug test comes back positive, even if the applicant was legally using marijuana under the state's Compassionate Use Act.

## What Should Employers Do in Light of Proposition 64?

California employers should review and update workplace policies to ensure they clearly state the company's drug-free workplace policy. With the new law, this should include a specific prohibition of possession or use of marijuana, in any form, in the workplace. Employees should also be reminded that impairment on the job will not be tolerated, even if the impairment resulted from use of an otherwise legal substance (alcohol, marijuana) off site.

If an employer's policies include pre-employment drug testing, applicants should be informed that they will also be tested for marijuana use.

We recommend the drug-free workplace policy be followed evenly. Making exceptions for one employee tends to undermine the effectiveness of a zero-tolerance policy and may also provide support for disparate treatment claims.

### Conclusion

Employers with lingering questions concerning their policies with Proposition 64 should not hesitate to contact their experienced employment law counsel.

**The Law Offices of Alex W. Craigie** helps employers throughout California prevent, address and resolve employment disputes in a logical and cost-effective manner. Reach us at (323) 652-9451, (805) 845-1752 or at [Alex@CraigieLawfirm.com](mailto:Alex@CraigieLawfirm.com).

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