

Duff on Hospitality Law

I-502 and You, Washington's New Marijuana Laws and Your Drug Policies

By Jared Van Kirk on 12.6.12 | Posted in Employment Law

On November 6, Washington voters passed Initiative 502 related to the decriminalization of marijuana under state law. We understand that you may have questions about how this new law affects the enforcement of your employment policies including drug free workplace and drug testing policies.

Initiative 502 contains provisions that decriminalize under state law the possession of limited amounts of marijuana by people age 21 and over beginning on December 6. Initiative 502 also contains provisions intended to create a legal marketplace for purchasing marijuana in Washington that is regulated in a way similar to the sale of hard alcohol. These provisions will take up to a year to implement and may be challenged in the courts. If these provisions and the implementing rules are upheld, Washington residents age 21 and over will have legal (under state law) sources from which to purchase marijuana for personal use. Despite these changes to state law, all possession and distribution of marijuana remains unlawful under federal law.

Initiative 502 does not contain any provisions that alter existing Washington employment law or that create new employee rights. As a Washington employer, you may continue to make employment decisions, including discipline and termination, which take into account whether employees are intoxicated at work, test positive for marijuana while at work, or are in possession of marijuana while at work. You may continue to enforce your drug free workplace and drug testing policies with respect to marijuana use and possession in the workplace. Current federal and state disability law do not require you to allow the use of illegal drugs or alcohol in the workplace, although addiction may be a disability which must be accommodated by reasonable measures including time off to pursue addiction treatment. Marijuana use or addiction can and should be treated in the same manner as use of or addiction to any other illegal drug or alcohol.

The passage of Initiative 502 is a good opportunity to review your drug free workplace and drug testing policies to make sure they are consistent with the most current law and to review your disciplinary practices for violations of those policies or similar provisions of collective bargaining agreements.

Tags: drug testing, Initiative 502