



Is the grass really greener?

June 2, 2016

Note: This post has been updated to reflect passage of the legislation.

On June 8, 2016, Ohio Gov. John Kasich signed a medical marijuana bill, Sub. H.B. 523, into law, making Ohio the 25th state to adopt some form of approval and regulation of medical marijuana.

Sub. H.B. 523, which underwent robust discussion and numerous amendments, attempts to balance an expressed desire by Ohioans to approve medical marijuana while also getting ahead of a considerably more liberal measure proposed by the Washington D.C.-based Marijuana Policy Project (MPP). On May 31, MPP [announced](#) that it will be suspending its effort to collect signatures to put its initiative on the November ballot. That initiative would have authorized medical marijuana to be home-grown and smoked and would have become a permanent part of the Ohio Constitution, if approved by voters.

How will the new law affect Ohio employers?

- The legislation enumerates about 25 medical conditions for which persons may seek a medical marijuana registration card. However, nothing in the bill requires an employer to permit or accommodate an employee's use, possession or distribution of medical marijuana, nor does it prohibit an employer from taking any action that it may take under current law because of a person's use, possession or distribution.
- Employers may continue to have and consistently enforce zero tolerance policies or other drug-free workplace policies.
- Employers may take disciplinary action against medical marijuana users who test positive in the same manner as they would against others who test positive on drug tests.
- A medical marijuana user who is discharged for having tested positive is considered for unemployment purposes to have been discharged for cause if the use violated the employer's substance abuse policy.
- The Bureau of Workers' Compensation rebuttable presumption, which allows an employer to deny a claim if the employee tested positive and being under the influence was the proximate cause of the accident, remains in place. The



Marie-Joëlle C.

Khouzam

Partner

Columbus

614.227.2311

jkhouzam@bricker.com

employee can rebut this presumption at hearing.

- The bill does not permit a person to sue an employer for taking an adverse employment action related to medical marijuana.