



Ohio legalization of hemp, CBD oil may mean relief for some but more headaches for employers

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Governor Mike DeWine recently signed Senate Bill (S.B.) 57 into law, paving the way for the hemp industry to become one of Ohio's agricultural yields. Industrial hemp comes from cannabis plants that contain no more than 0.3 percent tetrahydrocannabinol (THC), the psychoactive compound of the plant. To legalize hemp and hemp products in Ohio, S.B. 57 excludes them from the definition of marijuana used to enforce laws governing controlled substances.

The legalization of hemp aligns Ohio with the federal government's posture following passage of the Farm Bill in December 2018. However, unlike the federal Farm Bill, which did not expressly remove cannabidiol extracted from hemp (CBD) from Schedule 1 of the Controlled Substances Act, Ohio's new law sanctions the sale of CBD oil, making it commercially available in retail stores. CBD-containing products, such as pain relief oil, lip balm, shampoos, anti-wrinkle creams, pet treats and many others, were banned last fall by the Ohio Pharmacy Board, which took the position that all products derived from marijuana had to be purchased only at state-licensed dispensaries. The board has now [abandoned](#) that posture in light of the new law.

The state Department of Agriculture will now establish a Hemp Cultivation and Processing Program that will issue licenses to persons seeking to cultivate or process industrial hemp or hemp products. Part of that process will be to ensure that any regulations it promulgates are in line with federal law. The rule-making process is expected to take approximately six months. Once this new phase of regulation is funded, the Department of Agriculture will begin sampling retail products to ensure truth in labeling (product claims, potency/concentration, etc.). The federal Food and Drug Administration has issued warnings to consumers about the inaccurate content of various CBD oil products, stating that "many were found to not contain the levels of

CBD they claimed to contain.” Other concerns relating to this industry include the lack of regulation of pesticides, herbicides and solvents used in the extraction process and mislabeling of the amount of THC in a product, which can be especially concerning when administering these products to children.

The legalization of products containing CBD oil raises many new questions for employers, as well as for school districts and other regulated environments. First, legalization under Ohio law does not alter employers’ obligations to drug-test certain employees under federal law. Pilots, CDL drivers (including school district bus drivers), mass transit, pipeline industry workers and many others in safety-sensitive positions are still subject to applicable random testing requirements, and covered employers must be mindful of these obligations.

Second, a high enough quantity of CBD oil consumed through edibles, vaping or other non-topical means could result in impairment and a positive drug test. This may be particularly noteworthy in these early days before the state is able to certify the dosing and content of retail CBD purchases. Although an employee using hemp-derived CBD oil would likely need to consume 1000-2000mg of a product to test positive, employers must consider how this could affect workplace policies.

Third, drug screening detects the presence of THC. However, even hemp-based CBD products can contain traces of THC. These tests will not identify the type of substance consumed; they will merely identify the presence or absence of THC at the levels measured by the test.

A related consideration is how school districts will respond to this new law. CBD oil is viewed by some parents as a homeopathic alternative to prescribed ADHD medications or pain treatment for sports injuries. Although it may now be legal in Ohio, CBD’s status under federal law still creates a dilemma for public schools and others receiving federal funding. At this time, the only FDA-approved prescription medication made from CBD oil is Epidiolex, and even its use in a school setting creates a legal grey area. Districts should review their Drug-Free School Zone and Workplace policies and procedures concerning the use or possession of controlled substances and apply their policies consistently.

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