



## LEGAL UPDATES

# Missourians Legalized It; What Does That Mean for Missouri Employers?

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On Tuesday, November 8, 2022, Missouri voters passed Amendment 3 to the Missouri Constitution, which made Missouri the 21<sup>st</sup> state to legalize recreational marijuana. Assuming the election results are certified, the amendment will take effect starting December 8, 2022. Missouri residents over the age of 21 will then be able to purchase various forms of marijuana (such as edibles, pre-rolled joints, and buds or flowers) from dispensaries without being required to show a medical marijuana license. In addition, the amendment will expunge certain marijuana-related offenses.

The amendment also presents some new implications for employers. We've reviewed the amendment in its entirety and highlighted key issues that Missouri employers should be aware of below.

### Does the passing of this amendment mean that employees can use marijuana in the workplace?

No. The amendment explicitly states that it is not to be construed as allowing for the use of marijuana in the workplace. Missouri employers are not required to allow or accommodate marijuana use in the workplace or on the employer's property.

### Can an employer consider legal off-duty use in connection with discipline issues?

Employees can be disciplined for working or attempting to work while under the influence of marijuana. The amendment prohibits discrimination based on legal use of a lawful marijuana product (such as medical marijuana, if the individual has a valid medical marijuana ID card) off the employer's premises outside of working hours.

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## **What does “under the influence” mean? Is there a specific test or procedure required to determine if someone is “under the influence” of marijuana?**

Because this amendment is so new, the answer to this question remains to be seen. Amendment 3 does not expand on what it means for an employee to be “under the influence” of marijuana. Unlike some states such as Colorado, Missouri law does not currently define “under the influence” of marijuana, so we look forward to more developments in this area.

## **Can an employee bring a claim for wrongful termination or discrimination based on a prohibition which might have the effect of limiting an employee’s legal use?**

No. The amendment specifically prohibits a person from bringing such a claim against “any employer, former employer, or prospective employer” that is “based on the employer, former employer, or prospective employer prohibiting the employee, former employee, or prospective employee from being under the influence of marijuana while at work” or disciplining the employee or former employee for “working or attempting to work while under the influence of marijuana.”

## **How does this amendment affect an employer’s workplace drug testing policy?**

Missouri employers still may require applicants and employees to undergo drug testing as long as their workplace drug testing policy comports with applicable laws. For instance, this amendment does not impact or alter drug testing that is required by federal law. Additionally, if a current or prospective employee has a valid medical marijuana ID card, an employer may not take adverse action against them for a positive test result for medical marijuana.

## **Does this amendment mean that medical marijuana is no longer an issue?**

The amendment is clear that the legalization of recreational marijuana does not change current Missouri law regarding medical marijuana use.

## **How does this amendment affect an employer’s criminal history inquiries and background check policies?**

While Missouri law permits an employer to make inquiries into an applicant’s criminal history, the passing of Amendment 3 means that certain non-violent offenses related to marijuana will be expunged. Missouri employers are not permitted to inquire about expunged criminal records during the application process.

If you have questions about this alert, please contact either of the authors above or your regular Lathrop GPM contact. <https://www.lathropgpm.com/services-industries-cannabis.html>

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