

The latest estimates are that medical marijuana will be available to Ohioans with qualifying conditions by mid-January.

With that date approaching quickly, schools need to be prepared to address issues with students and staff regarding possession and use of medical marijuana.

## What Does the Law Say?

Ohio's medical marijuana law, passed in 2016, permits patients with any of 21 specific medical conditions to purchase, use and possess medical marijuana in any form (including dried, oils and edibles). Patients must register with the state Board of Pharmacy and, if the patient is under the age of 18, they must also have a registered caregiver to monitor their use of the medical marijuana.

Importantly, the law explicitly states that employers do not have to accommodate an employee's use of medical marijuana. Medical marijuana use or possession is considered just cause for termination under the law. For the purposes of workers' compensation, if an employee tests positive for marijuana after a workplace accident, the state presumes the marijuana was the cause of the accident, even if the employee is a registered patient. This raises the employee's burden to receive workers' compensation benefits.

Also, keep in mind that marijuana for any purpose, including medical use, is still prohibited by federal law. The federal government has declined to enforce many marijuana laws in states that have legalized the drug, but it remains a federal crime to possess, use or distribute marijuana for any purpose. As a result, neither the Americans with Disabilities Act nor the Family and Medical Leave Act require accommodations or leave for patients to use medical marijuana.

## What Does This Mean for Schools?

### Addressing Employee Use

All employers in Ohio, including schools, may continue to enforce zero-tolerance drug policies and may discipline, terminate or refuse to hire anyone who uses, possesses or distributes medical marijuana. Employers may also continue to conduct drug testing on employees. In other words, the new law does not require any change in how schools currently address employee drug use. Boards of education that are particularly concerned or want to clarify their policies can add language to their anti-drug policies that makes clear the use of medical marijuana is also a violation.

Ohio employers do have the option to accommodate medical marijuana use, but should be careful to make clear use of the drug at work is prohibited, and schools must ensure that employees are not under the influence of marijuana when they are responsible for supervising students or staff. Employers may also set different parameters regarding marijuana use for different jobs. For example, a school district can prohibit medical marijuana use for transportation employees (which would align with the requirements for their CDLs and keep them compliant with Department of Transportation regulations), while permitting custodial staff to use medical marijuana off campus. Note, though, that if your district receives a workers' compensation rebate for maintaining a drug-free workplace, you should *not* accommodate employees' medical marijuana use if you want to continue receiving the rebate.

### Addressing Student Use

Nothing in Ohio's medical marijuana law requires schools to permit students to use medical marijuana on campus. In fact, the only mention of schools in the law is to ban the establishment of a medical marijuana dispensary within 500 feet of a school. While some states with medical marijuana laws have included language to permit students to use the drug at school, Ohio has not. Meanwhile, as discussed herein, marijuana remains a Schedule I substance under federal law. As long as this is true, schools risk losing their federal funding if they permit students to use medical marijuana on campus. While the federal government has not been active in enforcing its prohibition on marijuana use on campus, the safest approach is to prohibit students, even those who are registered patients, from using marijuana products on school property or at school events.

This is a quickly evolving area of law, so school districts should consult with counsel about the best way to craft policies or address concerns regarding medical marijuana use by students or staff.

## Contacts

### W. Michael Hanna

Partner, Cleveland  
T +1 216 479 8699  
E [mike.hanna@squirepb.com](mailto:mike.hanna@squirepb.com)

### Emily R. Spivack

Associate, Cleveland  
T +1 216 479 8001  
E [emily.spivack@squirepb.com](mailto:emily.spivack@squirepb.com)