

## INSIGHTS + NEWS

### Client Alert: Employment Law Updates for Massachusetts and Rhode Island Employers

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#### THE LEGALIZATION OF MARIJUANA IN RHODE ISLAND: WHAT EMPLOYERS NEED TO KNOW

On May 26<sup>th</sup>, Rhode Island Governor Dan McKee signed legislation legalizing recreational marijuana use for adults 21 years of age and older, making Rhode Island the 19<sup>th</sup> state in the country to legalize marijuana for non-medical use. The law also provides that, by July 1, 2024, the Rhode Island Courts will automatically expunge past convictions for marijuana possession charges that are decriminalized by the law and allows those seeking expungement sooner to request it.

Further, the law contains the following key provisions:

- Employers are not required to accommodate the use or possession of cannabis in the workplace or working under the influence of cannabis. This explicitly covers employees performing work in any location, including remote work.
- Employers may refuse to hire, or may impose discipline up to and including termination, individuals who violate workplace policies on marijuana use or those who work while under the influence.
- Employers should be cautioned that they may not take any disciplinary action against employees solely for their private, lawful use of cannabis outside the workplace, unless such use is prohibited pursuant to the terms of a collective bargaining agreement. However, there are two exceptions for federal contractors and employees who perform “work that is hazardous, dangerous or essential to public welfare and safety.” Specifically:
  - Federal contractor employers may impose limits on employees’ private lawful usage of marijuana if required by the terms of a federal contract or regulation prohibiting the use of marijuana by its workforce.
  - If an employee’s job involves “work that is hazardous, dangerous or essential to public welfare and safety,” an employer may limit such employee’s private lawful cannabis usage within 24 hours of a shift or assignment. The law provides a non-exhaustive list of work that is covered by this exception, including but not limited to the operation of an aircraft, watercraft, heavy equipment, heavy machinery, commercial vehicles, public transportation, use of explosives, public safety-first responder jobs, and emergency and surgical medical personnel.

Still, Rhode Island employers undoubtedly will have concerns about how the legalization of marijuana usage will impact their workforces. While employers may dole out discipline on employees who violate workplace marijuana policies, one clear challenge will be identifying those who are under the influence at work. That is, there is not yet any scientifically validated test for proving impairment from cannabis, meaning employers should rely on observations such as physical appearance, smell, and job performance.

However, to foster a safe and healthy workforce, employers should take this opportunity to review their policies, and clearly communicate to employees that there will be zero tolerance for being intoxicated while performing work, which includes the otherwise lawful use of marijuana.

## MASSACHUSETTS HIRENOW INITIATIVE HALTS PRE-REGISTRATION

On March 23, 2022, the Commonwealth launched the HireNow initiative to address hiring challenges experienced by Massachusetts employers because of the COVID-19 pandemic. The goal of HireNow was to provide resources to enable eligible Massachusetts employers to quickly hire and train Massachusetts employees, including grants of \$4,000 per employee. These grant funds were slated to cover employees hired before the end of 2022. However, employers should be aware that [the Commonwealth just recently announced that due to high demand from employers, grant funds have been exhausted](#). While there is the possibility that additional funding may be made available, no new employer pre-registrations will be accepted for the time being.

We will continue to monitor and provide updates on further developments concerning this initiative, as well as other issues impacting employers.

If you have questions, please consult with your Bowditch attorney.