

Oregon, Alaska and D.C. Legalize Recreational Marijuana

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Voters in Oregon, Alaska and the District of Columbia approved laws legalizing recreational marijuana yesterday. Colorado and Washington first passed such laws in 2012.

Laws legalizing recreational marijuana reflect a growing acceptance of marijuana use by the American public as well as the federal government's current position (since mid-2013) not to oppose state laws permitting marijuana for medical and recreational purposes. Marijuana is the country's most popular substance of abuse (after alcohol) and remains an illegal drug under federal law.

The Oregon and Alaska laws legalize recreational marijuana use and create a network of retail marijuana stores similar to those operating in Colorado and Washington. The District of Columbia measure is more restrictive in that it permits individuals over the age of 21 to possess up to two ounces of marijuana for personal use and grow up to six marijuana plants at home. Due to D.C.'s status as a district, not a state, its laws are subject to Congressional and Presidential approval. It is unclear whether Congress and the President will approve this law, particularly when marijuana still is illegal under federal law.

There is some good news for employers, however. The new laws in Alaska and D.C. explicitly state that nothing in those laws are intended to require an employer to

permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees. Both laws also prohibit driving while under the influence of marijuana.

The Oregon law provides that the new marijuana law may not be construed to amend or affect in any way any state or federal law pertaining to employment matters, or to exempt a person from a federal law or obstruct the enforcement of a federal law. There are also provisions permitting federal contractors and grantees to prohibit the manufacture, delivery, possession or use of marijuana to the extent necessary to satisfy the federal requirements for the grant or contract.

The Oregon law takes effect on July 1, 2015 and stores could open the following year. Alaska's law will become effective 90 days after the election is certified, followed by a nine-month period to create implementing regulations.

Employers in jurisdictions with medical marijuana laws or recreational marijuana laws should carefully consider their policies with respect to marijuana use. While there is little risk under federal law, there may be certain risks under some state laws where marijuana use is permitted. Those risks must be weighed against an employer's need to operate a safe workplace.

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