



Labor and Employment Law Alert

Medical Marijuana “Unity Bill” Containing a Key Exception for “Safety-Sensitive” Jobs Sent to Governor Stitt Today

By Chris Thrutchley
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Medical marijuana legislation with provisions helpful for employers was sent to Governor Stitt today for approval. Known as the “Unity Bill” (HB 2612) for its broad support among employers and the cannabis industry, the legislation passed the House on February 28 by a vote of 93-5 and sailed through the Senate today by a vote of 43-5. Governor Stitt will likely sign the measure.

A major employer-friendly provision relates to safety-sensitive jobs. The Oklahoma Medical Marijuana Act (OMMA) prohibits adverse action against medical marijuana license-holders regardless of whether they are applying for or work in a safety-sensitive job. No employer may “refuse to hire, discipline, discharge or otherwise penalize” an applicant or employee solely based on testing positive for marijuana unless the applicant or employee does not have a valid license or the licensee possesses, consumes, or is under the influence of medical marijuana while at work or during the fulfillment of work-related duties.

However, the Unity Bill would allow employers to lawfully refuse to hire applicants for safety-sensitive jobs or to discipline or discharge employees who work in safety-sensitive jobs if they test positive for marijuana even if they have a valid license to use medical marijuana. According to the Unity Bill, safety-sensitive jobs are those with tasks or duties the *employer reasonably believes could affect the safety and health of the employee* or others, such as but not limited to:

- handling, packaging, processing, storage, disposal, or transport of hazardous materials
- operation of a motor vehicle, other vehicle, equipment, machinery, or power tools
- repairing, maintaining, or monitoring the performance or operation of any equipment, machinery, or manufacturing process, the malfunction or disruption of which could result in injury or property damage
- performing firefighting duties
- operation, maintenance, or oversight of critical services and infrastructure including, but not limited to, electric, gas, and water utilities, power generation, or distribution

- extraction, compression, processing, manufacturing, handling, packaging, storage, disposal, treatment or transport of potentially volatile, flammable, combustible materials, elements, chemicals, or any other highly regulated component
- dispensing pharmaceuticals, or prepare or handle food
- carrying a firearm or
- direct patient care or direct child care.

That means employers would have the discretion to decide what positions include safety-sensitive job duties that are exempt from the discrimination prohibitions of the OMMA. Employers should begin identifying those positions now and documenting the reasons for concluding that certain tasks or duties could affect the health or safety of the employee or others.

The Unity Bill also makes it clear that an employer providing worker's compensation benefits is *not* required to reimburse a person for costs associated with medical marijuana.

If you need help updating policies and procedures or training managers and supervisors to ensure compliance with the OMMA, please contact any [GableGotwals employment attorney](#).



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