Workers' Comp

Empire State Legalizes Recreational Marijuana

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On Wednesday, March 31, 2021, New York Governor Andrew Cuomo signed S854, a bill that would legalize the use of marijuana by adults 21 years of age or older. The bill, sponsored by Senator Liz Krueger, passed the Senate on Tuesday, was immediately heard on the Assembly floor and passed Tuesday evening and sent to the Governor for his signature. The Governor released a statement noting the fulfillment of his promise made in his State of the State address and detailing various provisions of the legislation.

The bill allows the legal use of marijuana in the same places it would be legal to smoke tobacco (except driving in a car), though more restrictions could be imposed. The 128-page bill includes provisions to create a Cannabis Control Board who then has a laundry list of licensing and taxing requirements that must be completed before the first licensed dispensary opens. The earliest expectations for the openings of the first dispensaries are in 2022.

Of note to employers, employees being prescribed medical cannabis are afforded the same rights and protections an injured worker would enjoy under the workers' compensation law when prescribed medications that could impact the performance of their job duties. Regarding recreational use, employers are barred from penalizing employees for off-premises, off-duty use of cannabis. However, an employer is not barred from taking action on cannabis use if the employer was required to act due to state or federal law or regulation, or if the employee is impaired by the use of cannabis and the impairment was such that it interfered with the individual's ability to perform their job or created a safety hazard, or if the use of cannabis by an employee violated the terms of a federal contract of federal funding.

The bill also has provisions allowing for the expungement of past marijuana convictions for activities that are legal in the new law. Other aspects of the new law direct roughly 40% of the anticipated tax revenue to programs in communities that were hardest hit by previous drug law enforcement.

New York is not alone in this effort. New Jersey finalized its marijuana legalization legislation (A21) in February. This effort built the legislative framework to regulate the legal cannabis business in New Jersey

following a vote to legalize marijuana last November.

New Mexico Governor Lujan called the legislature back into a special session to finalize passage of recreational marijuana legislation in the Land of Enchantment. The House passed its version of legalization (HB2) on Wednesday, March 31, 2021. The Senate followed suit later that day and the bill landed on the Governor's desk as the special session adjourned. The Governor was quick to release a statement on the passage of the legislation.



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