



clearing cannabis convictions

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Employment Law FAQ

Q&A ON THE INTERSECTION OF ILLINOIS RECREATIONAL CANNABIS USE AND THE WORKPLACE

Q. Do I have to disclose my lawful off-duty cannabis use to my Illinois employer?

A. No. The Illinois Right to Privacy in the Workplace Act prohibits employers from taking action against employees “because the individual uses lawful products off the premises of the employer during nonworking hours.”

Q. Do I have to disclose my Illinois cannabis arrests and convictions to my Illinois employer if they have been expunged or sealed?

A. No for most jobs with private and public employers. The Illinois Human Rights Act prohibits covered employers from using or inquiring about records of arrests not leading to convictions, juvenile offenses, and any expunged and sealed convictions for use in making employment decisions unless authorized by law. There are exceptions, however, such as jobs with law enforcement or childcare. Consult the Illinois Criminal Identification Act (20 ILCS 2630/12) for more information regarding exceptions.

Q. Can my Illinois employer still conduct random drug testing of employees?

A. Yes. The Cannabis Regulation and Tax Act (“CRTA”) permits employers to conduct drug testing, including random drug testing pursuant to a “reasonable” drug free workplace policy.

Q. Can I be fired or disciplined for using or possessing cannabis at work?

A. Yes. Under the CRTA, Illinois employers may still have “reasonable zero tolerance or drug free workplace policies, or employment policies concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace or while on call provided that the policy is applied in a nondiscriminatory manner.”

Q. Can I be fired for a positive cannabis drug test?

A. Not on the basis of the positive test alone. The CRTA provides how an Illinois employer may consider an employee to be impaired or under the influence and allows an employer to discipline an employee based on a good faith belief that the employee is under the influence or impaired, provided that the employee is first afforded a reasonable opportunity to contest the basis of the good faith determination of impairment or influence.

Q. Does my Illinois employer have to give an accommodation for my medical cannabis use?

A. Potentially under Illinois law, but federal law provides no protection as cannabis remains illegal as a Schedule 1 controlled substance.