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# Missouri Increases Minimum Wage and Expands Legal Cannabis: Compliance Reminder

Employers should be aware of the following changes to Missouri law, which apply to employers regardless of employee count.

## Minimum Wage

On January 1, 2023, Missouri's minimum wage will increase to \$12 per hour. The minimum cash wage for tipped employees will increase to \$6 per hour (half the minimum wage).

Employers in retail and service industries with less than \$500,000 in annual gross income are not subject to the Missouri state minimum wage and may pay the federal rate.

## Cannabis Legalization

Missouri has legalized recreational cannabis (marijuana) and added employment protections to its medical cannabis law, effective December 8, 2022.

### Protections for Off-Duty Medical Use

Employers can't discharge, discipline, or discriminate against an applicant or employee based on their status as a medical cannabis cardholder or solely based on a positive drug test for THC (the psychoactive ingredient in cannabis that drug tests screen for). To be protected, the applicant or employee has to have a valid medical cannabis identification card (whether they're a patient or primary caregiver to a patient).

However, these protections *don't* apply under any of these circumstances:

- The employee or applicant used, possessed, or was under the influence of cannabis at or during work.
- The employer would lose a federal monetary or licensing-related benefit.
- The employee's use of cannabis outside of work affects their ability to perform their job duties, affects the safety of others, or conflicts with a bona fide occupational qualification.

### Recreational Use Legalized

Recreational cannabis will be legalized for adults 21 and older, but the law isn't clear on employment protections. While the recreational cannabis law allows employers to discipline employees for working under the influence of cannabis, it's not clear whether they can rely solely on a positive test result to discipline. Disciplining based solely on a positive test result may be problematic because another part of the recreational law says that adults 21 and over can't lose any right or privilege for using recreational cannabis legally under state law, and most tests can't indicate current impairment.

## Action Items

You probably don't have to change your drug policy but may need to change the way you *implement* your policy. Regardless of cannabis being legalized in Missouri, you can continue to prohibit cannabis possession and use at work. If you maintain a drug testing program, keep in mind that drug tests can't determine whether an employee is currently high or when cannabis was last used, since THC can stay in a person's body for weeks.

Unless the protections for using recreational cannabis outside of work are clarified, the risk-averse approach is to discipline employees who test positive for THC *only when* you observe—and document—signs of on-duty use or impairment. For additional guidance, we recommend consulting with an employment law attorney.