

# LEGISLATIVE UPDATE

September 2016

## Medical Marijuana in Ohio

Today, September 8, 2016, Ohio's medical marijuana law becomes effective. Employers may be concerned that they need to revise their employee handbooks. Before doing so, here are some things to think about.

Implementation of the medical marijuana law will take time. Three established state agencies, the Department of Commerce, the Board of Pharmacy, and the Medical Board must develop the infrastructure of the Medical Marijuana Control Program through rules covering licensure, patient registration, and medical certificates, among other things. Establishing the rules can take up to, but no more than, a year. Under Section 3 of House Bill 523, the Medical Marijuana Control Program should be fully operational no later than September 8, 2018, but this is not a drop dead date.

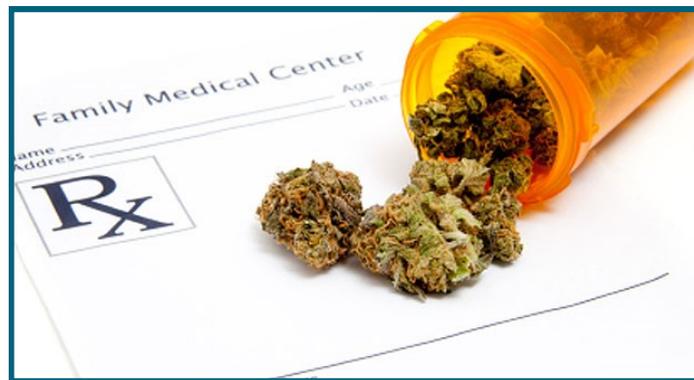
In addition, the law limits medical marijuana to patients with specific qualifying debilitating diseases (HIV, cancer, Alzheimer's, to name a few). Patients will be eligible to use medical marijuana in the following forms: oils, tinctures, plant material, edibles, patches

and any other form approved by the Board of Pharmacy. Use of medical marijuana by smoking or combustion is strictly prohibited. More importantly, patients can only use medical marijuana if it is

prescribed by a physician certified under the Medical Marijuana Control Program.

Further, the law specifically provides that employment laws are generally unaffected by the medical marijuana law. Nothing prohibits an employer from establishing and enforcing drug testing policies, drug-free workplace policies, or zero-tolerance

drug policies. People who are discharged from work because of violations of any of those policies are considered to have been discharged for just cause under the unemployment law. Moreover, the rebuttable presumption that an employee is ineligible for workers' compensation if he/she was found to be under the influence of marijuana at the time of the injury remains intact. Although the medical marijuana law is now effective, consider the parameters of the law and its implementation before rushing to revise policies.



## Department of Labor updates posters

Over the summer, the Department of Labor updated two of its required informational posters – the Fair Labor Standards Act Minimum Wage (“FLSA”) poster and the Employee Polygraph Protection Act (“EPPA”) poster. All employers were required to commence use of these updated posters by August 1, 2016. Please review your current posters and be sure your organization is displaying the revised versions. The FLSA poster should be posted in a conspicuous place where employees can readily read it. The EPPA poster should be posted in a conspicuous place where both employees and applicants can read it. Failure to properly display the current versions of required posters may result in the assessment of fines. Links to the new posters are provided below.

- FLSA: <https://www.dol.gov/whd/regs/compliance/posters/flsa.htm>
- EPPA: <https://www.dol.gov/whd/regs/compliance/posters/eppa.htm>

# Supreme Court Rules Valid Workers' Compensation Claim Unnecessary for Retaliation Claim

On July 21, 2016, the Ohio Supreme Court held that proof an allowed workers' compensation claim is not a required element in a case of retaliatory discharge under R.C. 4123.90. In *Onderko v. Sierra Lobo, Inc.*, Michael Onderko worked as an engineering technician with Sierra Lobo, Inc. On August 9, 2012, he felt right knee pain while moving office furniture. While on the way home, he stopped at a gas station, and his right knee gave out as he stepped off a curb. He presented to the emergency room that evening due to severe right knee pain but did not advise the medical providers about his knee hurting at work. Rather, he discussed only the gas station event as the cause of his knee pain.

On August 10, Mr. Onderko presented to an orthopedist for evaluation of his right knee and provided a 6 week history of right knee pain with no mention of a work related injury. On the same day as his visit with the orthopedist, Mr. Onderko called work and requested light duty restrictions for his knee. He denied that he injured his knee at work. Mr. Onderko later filed a workers' compensation claim which was disallowed by the Industrial Commission with a finding that he did not sustain an injury in the course of and arising out of employment as alleged. When Mr. Onderko did not appeal the decision of the Industrial Commission, Sierra Lobo, Inc., terminated Mr. Onderko for his "deceptive" attempt to obtain workers' compensation benefits for a non-work related injury.

Mr. Onderko filed a complaint asserting Sierra Lobo violated R.C. 4123.90 when it terminated his employment for pursuing a workers' compensation claim. He argued that the simple act of filing the workers' compensation claim triggered the statutory protection against retaliation under R.C. 4123.90.



In response, Sierra Lobo argued that Mr. Onderko was required to demonstrate the underlying claim for benefits actually involved a work-related injury. Sierra Lobo further requested that because the Industrial Commission determined Mr. Onderko's injury was not work-related, his retaliation claim must fail as a matter of law.

The trial court agreed with Sierra Lobo and dismissed the case, but the Sixth District Court of Appeals reversed. The Ohio Supreme Court affirmed the court of appeals decision stating the purpose of R.C. 4123.90 is to

enable employees to freely exercise their right to pursue a workers' compensation claim without fear of retribution. With this background the Supreme Court found that requiring employees to establish an allowed workers' compensation claim as a required element under R.C. 4123.90 would have a chilling effect-making an employee choose between continued employment and the pursuit of a workers' compensation claim.

Accordingly, the Supreme Court held that pursuant to the plain language of R.C. 4123.90, employees are not required to prove they were injured in the course of and arising out of employment. Instead, the court held the anti-retaliation protections afforded under R.C. 4123.90 are triggered by the simple fact of filing a workers' compensation claim.

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