Oklahoma employers received a much-needed boost from the recent passage of the Oklahoma Medical Marijuana and Patient Protection Act, more commonly called the “Unity Bill.” This legislation comes after much upheaval about the Oklahoma electorate’s passage of the Oklahoma Medical Marijuana Act (OMMA)—State Question 788—in the summer of 2018. Many experts have characterized the Oklahoma medical marijuana law as a permissive-use marijuana law due to the fact that the law has very few restrictions compared to other states’ medical marijuana laws. The law has no list of qualifying conditions for getting a medical marijuana license, leaving it up to doctors to determine who needs marijuana. The only other state to fashion a medical marijuana law similar to this is California. The version of the law passed by voters also puts few restrictions on dispensaries (aside from being 1,000 feet from schools). Attempts to add details to the law through regulation were met with strong opposition, and they were later stricken as changing not only the letter of the law but also the spirit.

In creating the Unity Bill, lawmakers obtained input from several interested groups including employers’ groups, chambers of commerce, law enforcement, banks, tax commission leaders, and cannabis advocates. The Unity Bill clarifies the OMMA.

The Unity Bill accomplishes the following:

1. Establishes requirements for testing medical marijuana inventories for contaminants and cannabinoid and terpenoid (THC/CBD) content
2. Implements labeling requirements, including a universal symbol for tetrahydrocannabinol (THC), potency, a statement that the product has been tested for contaminants, and a ban on packaging that is made to appeal to children
3. Bans counties from making laws that restrict access to medical marijuana
4. Affirms the right of medical marijuana patients to own firearms
5. Restricts smokable marijuana in public in a way that mirrors restrictions on public tobacco use
6. Creates caregiver licenses, which would authorize caregivers to buy and deliver products marijuana to a medical marijuana license holder
7. Details rules and regulations for establishing medical marijuana businesses including commercial growers, processors, transporters, laboratories for testing, and dispensaries
The OMMA, and subsequently the Unity Bill, prohibit employers from taking action against applicants or employees solely on the basis of either their status as a medical marijuana license holder or on the basis of a positive test for marijuana. The Unity Bill defines a “positive test for marijuana components or metabolites” as “a result that is at or above the cutoff concentration level established by the United States Department of Transportation or Oklahoma law regarding being under the influence, whichever is lower.” Possession and use of medical marijuana while at work or in or on company property can still be prohibited.

Most importantly, the Unity Bill allows 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 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.” A nonexhaustive list of job examples is included in the law, listing the following:

a. “the handling, packaging, processing, storage, disposal or transport of hazardous materials,

b. the operation of a motor vehicle, other vehicle, equipment, machinery or power tools,

c. 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,

d. performing firefighting duties,

e. the operation, maintenance or oversight of critical services and infrastructure including, but not limited to, electric, gas, and water utilities, power generation or distribution,

f. the 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,

g. dispensing pharmaceuticals,

h. carrying a firearm, or

i. direct patient care or direct child care”

The new law gives employers the discretion to decide what positions include safety-sensitive job duties that are exempt from the anti-discrimination prohibitions of the OMMA. Employers with Oklahoma-based employees may want to identify job positions that fall into this broad, protected category and document the basis for concluding that those job positions require the performance of tasks or duties that could affect the health or safety of the employee or others. The safety-sensitive job classification now provides a valid method for employers to curb the potential use of marijuana (even medical marijuana) by employees and to enhance a drug-free work environment.

The Unity Bill also provides a legal remedy for applicants and employees. It clarifies that any aggrieved applicant or employee has an exclusive remedy for a willful violation of the law under the Oklahoma Standards for Workplace Drug and Alcohol Testing Act.
The Unity Bill will go into effect on August 29, 2019.