On March 20, 2019, House Bill 243 (HB243) was introduced in the Alabama House of Representatives. HB243, a bipartisan bill with extensive support from both the majority and minority leaders, would create the Compassion, Access, Research, and Expansion Act (CARE Act) to legalize medical marijuana in Alabama for individuals with certain medical conditions. In its current form, HB243 lists 33 medical conditions and categories of conditions for which an individual would be eligible for a medical marijuana card in Alabama, including addiction, anxiety, autism, cancer, chronic pain, Crohn’s disease, depression, glaucoma, epilepsy/seizures, irritable bowel syndrome, posttraumatic stress disorder, sleep disorders, and terminal conditions. The bill would also allow the use of medical marijuana for “[a]ny additional conditions” approved by the Alabama Medical Cannabis Commission.

While the CARE Act is primarily a decriminalization bill that would create an Alabama Medical Cannabis Commission tasked with overseeing the health and business sides of medical marijuana, employers may want to begin preparing for its likely passage.

As of April 2019, 38 states and the District of Columbia have enacted laws that legalize medical marijuana use—but the only states in the Deep South that have done so are Arkansas, Florida, and Louisiana. While medical marijuana laws vary from state to state, employers may want to pay attention to two classifications of medical marijuana statutes: (1) those that contain express anti-discrimination provisions and (2) those that do not. With the former, the language of the statutes prohibits employers from discriminating against medical marijuana users in employment decisions (e.g., hiring, firing) based on their status as medical marijuana cardholders. Courts in Arizona, Connecticut, Delaware, and Rhode Island have held that medical marijuana cardholders may assert claims based on the anti-discrimination provisions contained in the medical marijuana statutes in these states.

At this time, HB243 does not contain an anti-discrimination provision and, therefore, does not provide any statutory employment protections for medical marijuana cardholders. HB243 also states that it does not require an employer to allow on-site possession or use of medical marijuana in the workplace.

This chapter does not do any of the following:

(2) Require any employer to allow the medical use of cannabis in the workplace or to modify the job or working conditions of an individual who engages in the medical use of cannabis that are based upon the reasonable business purposes of
3. Limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy.

In the absence of an express anti-discrimination provision, it is unlikely that an Alabama court would determine that an employer has violated the CARE Act by taking adverse employment action against a job applicant or employee based on a failed drug test for medical marijuana—though employers may want to focus on the failed drug test and not the reason (i.e., marijuana) for the failed test.

Nonetheless, Alabama employers may want to keep in mind a separate concern in handling job applicants and employees who are medical marijuana cardholders. Because an individual must have one of the enumerated medical conditions in order to qualify for a medical marijuana card, each of which could be a disability under the Americans with Disabilities Act (ADA), Alabama employers may want to be cognizant of the possibility of marijuana-related ADA claims based upon an individual’s underlying medical condition serving as the basis for the medical marijuana use. Alabama employers will recognize that the ADA concerns associated with medical marijuana are the same as those associated with prescription painkillers.

Courts in the District of Columbia, Massachusetts, New Jersey, and Rhode Island have recognized viable disability claims in medical marijuana cases—although all of these cases have dealt with state disability discrimination laws instead of the ADA. Even still, Alabama employers can likely expect disability claims arising out of medical marijuana use if the CARE Act is passed.

We will continue to monitor HB243 as it advances through the Alabama Legislature.