

PROPOSITION 64: IMPACT OF RECREATIONAL MARIJUANA ON SCHOOLS, MUNICIPALITIES, AND HEALTH CARE PROVIDERS

On November 8, 2016, California voters approved Proposition 64, the California Marijuana Legalization Initiative. The passage of Prop. 64 is poised to legalize the cultivation, manufacture and sale of marijuana for recreational use in California effective January 1, 2018. This *Briefing* discusses the impact of Prop. 64 on employers including schools, municipalities and health care providers.

PROVISIONS OF PROPOSITION 64

Proposition 64 legalized personal use of marijuana as of the day after it passed and established a statutory framework for legalizing the cultivation, processing, manufacture, testing, transportation, and sale of marijuana and marijuana products. It also set forth a framework for the regulation and taxation of those products. Various state agencies have been tasked with developing regulations, which should be in force by January 1, 2018.

At its most basic level, Proposition 64 changed the following:

- Since November 9, 2016, adults aged 21 and older can legally possess up to 28.5 grams of marijuana (or 8 grams of concentrated cannabis) and use it for recreational purposes.
- Since November 9, 2016, an individual is allowed to grow up to six plants for private use, as long as the plants are grown in or on the grounds of a private residence in an area that is secured and not visible from a public place.
- As of January 1, 2018, the cultivation, manufacture, processing, transportation, and sale of marijuana and marijuana products will be legal in the state of California.

In addition to understanding what Proposition 64 changes, it is just as important to understand what it does not change. As a threshold matter, it did not change a single provision of federal law. The cultivation, manufacture, sale, and use of marijuana is still illegal under federal law. Proposition 64 also carved out a number of areas of state law which will remain unchanged in California. Those areas of important to employers, especially schools, municipalities, and health care providers, are set forth below.

EMPLOYERS

Many California employers are concerned about the implications of Proposition 64 in the workplace. What will this mean for our Drug-Free Workplace policies? What about the people whose job requires them to drive? Can we still drug test?

Luckily, Proposition 64 set forth a number of areas of the law that did not change, even though marijuana use is now legal.

- Prop. 64 does not prohibit or preempt the rights and obligations of public and private employers to maintain a drug-free and alcohol-free workplace.
- Prop. 64 does not require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace.
- Prop. 64 does not affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law.

With regard to operating vehicles, Prop. 64 explicitly does not change laws that make it unlawful to drive or operate a vehicle while smoking, ingesting, or being impaired by marijuana or marijuana products. Possessing an open container or open package of marijuana or marijuana products is likewise still illegal.

SCHOOLS

School districts have additional concerns about Proposition 64. While smoking or ingesting marijuana is still illegal for minors under the age of 21, schools are concerned about enforcement. The following are still prohibited by law under Prop. 64:

- Selling, giving, or advertising marijuana or marijuana products to minors under the age of 21.
- Smoking marijuana or marijuana products within 1,000 feet of a school, day care center, or youth center while children are present at such location, except in or upon the grounds of a private residence, and only if the smoking is not detectable by others on the grounds of the school, day care center, or youth center while children are present.
- Possession of marijuana on the grounds of a school, day care center, or youth center while children are present.
- Businesses selling marijuana within 600 feet of a school, day care center, or youth center.

MUNICIPALITIES

Local jurisdictions (e.g., city, county, etc.) have the ability under Prop. 64 to completely prohibit the establishment or operation of marijuana sales, cultivation, and processing facilities within their borders. They can ban marijuana deliveries within their territorial limits. They also retain under the law their ability to adopt and enforce local ordinances, business license requirements, zoning, and land use requirements and laws regarding the exposure to secondhand smoke. Furthermore, smoking or ingesting marijuana or marijuana products in any public place will still be illegal.

Prop. 64 does, however, prevent local jurisdictions from banning indoor cultivation for personal use. Under the law, local jurisdictions must allow cultivation of up to six marijuana plants for personal use per residence. However, municipalities can “reasonably regulate” indoor cultivation for personal use, and require a permit for same.

HEALTH CARE PROVIDERS

Prop. 64 does not impact the laws prohibiting the use of controlled substances by doctors and nurses. The Medical Practice Act subjects to discipline any licensed practitioner of the healing arts (including physicians) who uses any controlled substance (which still includes marijuana), any dangerous drug, or alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the practitioner, any other person, or the public, or to the extent that such use impairs the ability of the practitioner to practice safely. Similarly, the Nursing Practice Act prohibits the use any controlled substance, any dangerous drug or dangerous device, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

Moreover, Prop. 64 does not prohibit or preempt laws providing that it would constitute negligence or professional malpractice to undertake any task while impaired from smoking or ingesting marijuana or marijuana products.

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