

 **ILLINOIS COUNCIL OF SCHOOL ATTORNEYS** 33rd ANNUAL
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Thoughts about Illinois Cannabis Legalization: Employment, Education, Equity, and Expungement

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Marijuana in the School Setting

- Marijuana and Students
 - ❖ Medical Cannabis Products
 - ❖ Handling CBD Products
- Marijuana and Employees
 - ❖ Medical Marijuana
 - ❖ Recreational Marijuana
 - ❖ Expungement Concerns

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Marijuana

1. Student use of Medical Cannabis Infused Products:

“Ashley’s Law” – Effective August 1, 2018

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Marijuana

“Ashley’s Law” – Effective August 1, 2018

A school district, public school, charter school, or nonpublic school shall authorize a parent or guardian or any other individual registered as a designated caregiver of a student who is a registered qualifying patient to administer a medical cannabis infused product to the student on the premises of the child's school or on the child's school bus if both the student (as a registered qualifying patient) and the parent or guardian or other individual (as a registered designated caregiver) have been issued registry identification cards under the Compassionate Use of Medical Cannabis Pilot Program Act. After administering the product, the parent or guardian or other individual shall remove the product from the school premises or the school bus.

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“Ashley’s Law” – Effective August 1, 2018

A parent or guardian or other individual may not administer a medical cannabis infused product under this Section in a manner that, in the opinion of the school district or school, would create a disruption to the school's educational environment or would cause exposure of the product to other students.

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“Ashley’s Law” – Effective August 1, 2018

A school district or school may not discipline a student who is administered a medical cannabis infused product by a parent or guardian or other individual under this Section and may not deny the student's eligibility to attend school solely because the student requires the administration of the product.

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“Ashley’s Law” – Effective August 1, 2018

Nothing in this Section requires a member of a school's staff to administer a medical cannabis infused product to a student.

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PA 101-370, effective January 1, 2020, expands Ashley’s Law:

- *A school must allow a school nurse or school administrator to administer a medical cannabis infused product to a student who is a registered qualifying patient .*
- *A school may authorize the self-administration of a medical cannabis infused product by a student who is a registered qualifying patient if the self-administration takes place under the direct supervision of a school nurse or school administrator.*
- *Medical cannabis infused products that are to be administered under subsection (b-5) must be stored with the school nurse at all times in a manner consistent with storage of other student medication at the school and may be accessible only by the school nurse or a school administrator.*

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2. Cannabidiol (CBD) Products

- Cannabidiol (“CBD”) is a “non-intoxicating molecule found in industrial hemp and marijuana.” CBD derived from industrial hemp is usually free of tetrahydrocannabinol (“THC”), but if the CBD is derived from the marijuana portion of the plant then it may contain some THC. CBD products containing 0.3% THC are legal under federal law, as they are now classified as industrial hemp. The Agriculture Improvement Act was passed by Congress in 2018 and it removed industrial hemp from the Controlled Substance Act and instead made it an agricultural item. 7 U.S.C. § 3319d (c)(3)(E) (2018).

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2. Cannabidiol (CBD) Products

- Supplements are not generally regulated by the Food and Drug Administration (“FDA”) currently, which means these CBD products are not regulated by the FDA. This can lead to health and safety concerns as there could be additional elements added to the CBD product, or the ingredients listed could be different than those actually in the product. It is also important to note that the actual health benefits and side-effects are largely unknown.

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2. Cannabidiol (CBD) Products

- While CBD products are sold over-the-counter, there is only one CBD product that is FDA approved: Epidiolex, which is used to treat rare pediatric seizure disorders.

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2. Cannabidiol (CBD) Products

- How should we handle CBD products with students?
- How should we handle CBD products with employees? (Stay Tuned)

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Marijuana in the School Setting

- Marijuana and School Employees
 - ❖ Medical Marijuana
 - ❖ Recreational Marijuana
 - ❖ Expungement Concerns

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Marijuana

1. Medical Marijuana Changes

- Senate Bill 2023 was signed into law on August 9, 2019 by Governor Pritzker. 30 ILCS 500/1-10 (via PA 101-363, effective August 9, 2019). This bill adds eleven new conditions that can qualify for medical marijuana prescriptions and allows certain advanced practice nurses and physician assistants to prescribe medical marijuana, rather than solely physicians.

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Marijuana

1. Medical Marijuana Changes

- PA 101-363 adds the following new conditions that can qualify for medical marijuana: ulcerative colitis, autism, chronic pain, irritable bowel syndrome, migraines, osteoarthritis, anorexia nervosa, Ehlers-Danlos syndrome, Neuro-Behcet's Autoimmune Disease, neuropathy, polycystic kidney disease, and superior canal dehiscence syndrome.

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2. Cannabidiol (CBD) Products

- How should we handle CBD products with employees?

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3. Employee Use of Medical Marijuana

- The Compassionate Use Act in Illinois specifies that a qualifying patient cannot be denied any right or privilege and cannot be disciplined by an occupational or professional licensing board if they use medical marijuana in compliance with the act in question. 410 ILCS 130/25 (a). However, the Act does not allow possession or usage of cannabis on school grounds or on a school bus, unless it is permitted by the Illinois School Code. 410 ILCS 130/30 2-3. There is no carve-out for an employee to use medical marijuana in the School Code and as such schools may keep medical marijuana users from using the product on school grounds.

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3. Employee Use of Medical Marijuana

- In Illinois, the specific language of the statute may – for the present time – prevent successful claims by employees regarding employment policies. The Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/50) provides:

Sec. 50. Employment; employer liability.

- (a) Nothing in this Act shall prohibit an employer from adopting reasonable regulations concerning the consumption, storage, or timekeeping requirements for qualifying patients related to the use of medical cannabis.
- (b) Nothing in this Act shall prohibit an employer from enforcing a policy concerning drug testing, zero-tolerance, or a drug free workplace provided the policy is applied in a nondiscriminatory manner.

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3. Employee Use of Medical Marijuana

- In Illinois, the specific language of the statute may – for the present time – prevent successful claims by employees regarding employment policies. The Compassionate Use of Medical Cannabis Pilot Program Act (410 ILCS 130/50) provides:

Sec. 50. Employment; employer liability.

- (c) Nothing in this Act shall limit an employer from disciplining a registered qualifying patient for violating a workplace drug policy.
- (d) Nothing in this Act shall limit an employer's ability to discipline an employee for failing a drug test if failing to do so would put the employer in violation of federal law or cause it to lose a federal contract or funding.

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Marijuana

3. Employee Use of Medical Marijuana

Sec. 50. Employment; employer liability.

- (f) An employer may consider a registered qualifying patient to be impaired when he or she manifests specific, articulable symptoms while working that decrease or lessen his or her performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, negligence or carelessness in operating equipment or machinery, disregard for the safety of the employee or others, or involvement in an accident that results in serious damage to equipment or property, disruption of a production or manufacturing process, or carelessness that results in any injury to the employee or others. If an employer elects to discipline a qualifying patient under this subsection, it must afford the employee a reasonable opportunity to contest the basis of the determination.

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3. Employee Use of Medical Marijuana

Sec. 50. Employment; employer liability.

- (f) An employer may consider a registered qualifying patient to be impaired when he or she manifests specific, articulable symptoms while working that decrease or lessen his or her performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, negligence or carelessness in operating equipment or machinery, disregard for the safety of the employee or others, or involvement in an accident that results in serious damage to equipment or property, disruption of a production or manufacturing process, or carelessness that results in any injury to the employee or others. If an employer elects to discipline a qualifying patient under this subsection, it must afford the employee a reasonable opportunity to contest the basis of the determination.

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3. Employee Use of Medical Marijuana

Sec. 50. Employment; employer liability.

- (g) Nothing in this Act shall be construed to create or imply a cause of action for any person against an employer for: (1) actions based on the employer's good faith belief that a registered qualifying patient used or possessed cannabis while on the employer's premises or during the hours of employment; (2) actions based on the employer's good faith belief that a registered qualifying patient was impaired while working on the employer's premises during the hours of employment; (3) injury or loss to a third party if the employer neither knew nor had reason to know that the employee was impaired.

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4. Employee Use of Recreational Marijuana

- The Cannabis Regulation and Tax Act (PA 101-27) allowing recreational use of marijuana in Illinois for those over the age of twenty-one (21) is very clear in its requirements that marijuana possession and usage is impermissible on or near school grounds or school buses. 410 Ill. Comp. Stat. 705/10-35.
- Additionally, all employers are allowed, should they so choose, to develop a policy of a drug free workplace. 410 Ill. Comp. Stat. 705/10-50. This Act does not determine or require that employers allow their employees to use marijuana or marijuana products. Thus, an employer can also discipline or fire a worker for violating a drug free work policy, should the employer so choose.

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4. Employee Use of Recreational Marijuana

- The Act clearly states that employers cannot discipline employees for marijuana use outside of work hours. However, if impairment is clear during the work day, the Act does not prevent an employer from disciplining or terminating an employee, or if the employee violates the employer's drug free workplace policy. 410 Ill. Comp. Stat. 705/10-50(b), 410 Ill. Comp. Stat. 705/10-50(c). The Act further clarifies what is necessary for an employer to consider when determining if an employee is incapacitated:

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4. Employee Use of Recreational Marijuana

Sec. 10-50. *Employment; employer liability.*

- (a) Nothing in this Act shall prohibit an employer from adopting reasonable zero tolerance or drug free workplace policies, or employment policies concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace or while on call provided that the policy is applied in a nondiscriminatory manner.
- (b) Nothing in this Act shall require an employer to permit an employee to be under the influence of or use cannabis in the employer's workplace or while performing the employee's job duties or while on call.

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4. Employee Use of Recreational Marijuana

Sec. 10-50. *Employment; employer liability.*

- (c) Nothing in this Act shall limit or prevent an employer from disciplining an employee or terminating employment of an employee for violating an employer's employment policies or workplace drug policy.

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4. Employee Use of Recreational Marijuana

Sec. 10-50. *Employment; employer liability.*

- (d) An employer may consider an employee to be impaired or under the influence of cannabis if the employer has a good faith belief that an employee manifests specific, articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operating equipment or machinery; disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property; disruption of a production or manufacturing process; or carelessness that results in any injury to the employee or others. If an employer elects to discipline an employee on the basis that the employee is under the influence or impaired by cannabis, the employer must afford the employee a reasonable opportunity to contest the basis of the determination.

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4. Employee Use of Recreational Marijuana

Sec. 10-50. *Employment; employer liability.*

- (i) For purposes of this Section, an employee is deemed "on call" when such employee is scheduled with at least 24 hours' notice by his or her employer to be on standby or otherwise responsible for performing tasks related to his or her employment either at the employer's premises or other previously designated location by his or her employer or supervisor to perform a work-related task.

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5. Expungement of Prior Offenses

- The Illinois School Code provides that a school employee's licensure may be revoked should they commit certain Narcotics offenses, including certain offenses defined in the Cannabis Control Act. 105 ILCS 5/21B-80. The School Code also provides that all employees who wish to be employed at a school must submit to a fingerprint criminal record test. 105 ILCS 5/10-21. The statute further explains school boards cannot knowingly hire someone who was convicted of an offense that would lead to license revocation or suspension.

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5. Expungement of Prior Offenses

- 105 ILCS 21B-80(b): *Whenever the holder of any license issued pursuant to this Article or applicant for a license to be issued pursuant to this Article has been convicted of any drug offense, other than [a Class X felony], the State Superintendent of Education shall forthwith suspend the license or deny the application, whichever is applicable, **until 7 years following the end of the sentence for the criminal offense.** If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the State Superintendent of Education shall forthwith terminate the suspension of the license.*

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5. Expungement of Prior Offenses

- The new recreational marijuana law (PA 101-27) also sets forth that drug **charges** (arrests, but not convictions) for a “minor cannabis offense” (generally, possession of less than 30 grams and a non-violent offense) will be automatically expunged.
- In order to expunge a **conviction**, individuals can petition to have those prior offenses expunged provided they meet the statutory requirements.

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Marijuana

5. Expungement of Prior Offenses

- Based on these expungements, individuals with certain prior convictions which may currently prohibit employment with a school district pursuant to Section 21B-80 of the School Code, may be eligible for employment in the future without the seven-year waiting period currently anticipated under 21B-80(b).

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