

BELOW THE RED LINE

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ROYSTER

WORKERS' COMPENSATION UPDATE "WE'VE GOT YOU COVERED!"

A Newsletter for Employers and Claims Professionals

December 2019

A WORD FROM THE PRACTICE CHAIR

I do hope when this latest edition of our newsletter reaches you, you are reading it in your pajamas, nestled by a warm fire, thinking about your holiday season, and making big plans for 2020. We start a new decade (how is that possible, right?!) and begin planning for our vision of what the next decade will bring. Dream big and never worry about failure because with failure comes the best lessons. Thank you all for what has been a great decade serving your legal needs and developing some wonderful friendships along the way. Heyl Royster has been truly blessed to work with wonderful people and great companies that are the backbone of so many communities around this State and Country. We consider ourselves very fortunate to be part of your Team today and into the future. I know just how bright 2020 will be working with you. Cheers to you and yours and here is wishing you a Safe and Happy New Year!

Ms. Callie Lee, one of our associates from our Rockford office, has provided us with timely insight as to the Illinois Cannabis Regulation and Tax Act, which allows for the legalization of recreational marijuana for people over the age of 21. This begins on January 1, 2020. We all realize the big impact this has on our workforce and the potential for employment related issues, as well as moving forward, with our workers' compensation claims handling. Please consider this article a primer on what is before us and what we are allowed to do as employers. I know this new law seems to create more questions than answers. We are here to help with that. Heyl Royster has already been providing our

clients with expert advice and giving presentations on this new legislation so that our clients can be put at ease. We are here to help and we stand ready to assist you in navigating what will surely be an interesting 2020 based upon the interplay between recreational marijuana and our clients' desire to keep a safe and drug-free work environment. Just call or e-mail me and we can help inform you and protect your interests moving forward.



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HEYL ROYSTER WORKERS' COMPENSATION UPDATE

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Editor, Lynsey Welch

CANNABIS TRAILER BILL ENLIGHTENING FOR EMPLOYERS

By: Callie Lee, Rockford Office

With 2020 fast approaching, the *Cannabis Regulation and Tax Act* (the Act), which legalizes recreational marijuana in Illinois for adults who are 21 or older, has been at the forefront of many employers' minds. The new law takes effect on January 1, 2020, and has left employers puzzled over how it will affect the workplace.

Due to the debate and confusion this legislation has ignited, Governor Pritzker signed SB 1557 into law as PA 101-593 on Wednesday, December 4, 2019, which addresses some of the concerns that employers have voiced regarding their workplace drug policies. Pub. Act 101-593 (eff. Dec. 4, 2019) (amending 410 ILCS 705/1-1). The changes in this Amendment took effect immediately after Governor Pritzker signed them into law, and they help assist employers in understanding how the Act will actually impact the workplace, right on time for the New Year.

The Act, as it was originally written, does not prohibit an employer from implementing a zero tolerance or drug-free workplace policy as long as it is reasonable and applied in a nondiscriminatory manner. 410 ILCS 705/10-50(a). Workplace policies can prevent employees from smoking, consuming, storing, or using cannabis while in the workplace, while performing job duties, or while on call (which means an employee who is scheduled with at least 24 hours' notice by his/her employer to be on standby for performing work tasks). *Id.* § 10-50(a),(i). Additionally, the Act allows an employer to discipline an employee, or even terminate that employee, if the employee violates the policy. *Id.* § 10-50 (c).

Furthermore, the Act articulates what it means to be under the influence of cannabis. According to the legislation, an employer must possess a "good faith belief" that the employee manifests particular signs and symptoms while at work. *Id.* § 10-50(d). These symptoms include effect "of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operating equipment or machinery." *Id.* Moreover, if the employee has a disregard for the safety of himself/herself or others, is involved in any accident that results in serious damage to equipment or property, disrupts the production or manufacturing process, or exhibits carelessness that results in any injury to himself/herself or others, the employer has a good faith belief that the employee is impaired by marijuana. *Id.* The employer must be able to show a good faith belief prior to disciplining or terminating an employee, and if the employer does choose to take adverse action, they must allow the employee a reasonable opportunity to contest the determination that he/she was under the influence. *Id.*

Although the information in the Act as it was initially written was helpful to a certain extent, many employers were still apprehensive about certain ambiguities which could lead to liability. Some of the voiced concerns included whether or not an employer was allowed to randomly drug test individuals or whether an employer could require that job applicants submit to a drug test. These questions arose because the original legislation also amended the *Right to Privacy in the Workplace Act* (Privacy Act), which prohibits employers from taking adverse action against an employee for the use of lawful products while off the premises of the employer, during nonworking and non-call hours. 820 ILCS 55/5(a). Additionally, it provided that cannabis would now be considered a lawful product. *Id.*

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The amended provision to the Privacy Act appeared to prevent employers from taking adverse action against employees for failing a drug test. A person can test positive for marijuana weeks after it has been consumed. Therefore, it would be impossible for an employer to discern whether the failure of the drug test was the result of being incapacitated or consuming cannabis at work or based on recreational use outside of the workplace. This meant that although employers could implement zero tolerance policies, they would be greatly restricted.

The Amendment to the *Cannabis Regulation and Tax Act* attempts to address these discrepancies. The Amendment explicitly states that there will be no creation or implied cause of action for an employee against an employer for actions taken pursuant to an employer's reasonable and nondiscriminatory workplace drug policy, which includes nondiscriminatory random drug testing, discipline, termination, and even withdrawal of a job offer due to failing a drug test. 410 ILCS 705/10-50(e)(1). Ultimately, it creates more flexibility and protection for employers in the implementation of their drug policies.

Another interesting development included in the Amendment discusses the public employer realm. Specifically, it explains how an employer may treat certain off duty personnel. According to § 705/10-35(a)(8), a public employer of law enforcement officers, corrections officers, probation officers, paramedics, or firefighters may prohibit the consumption, possession, sales, purchase, or delivery of cannabis or cannabis-infused substances while on **OR** off duty. *Id.* Unless the employer's policies provide otherwise, disciplinary action may be taken if an employee is found to be in violation of the policy. *Id.* The Amendment does state that if this section conflicts with an applicable collective bargaining agreement, the bargaining agreement

will prevail. *Id.* Additionally, the Amendment made sure to discuss that this Act does not "limit in any way the right to collectively bargain over the subject matters contained in this Act." *Id.*

Although these changes help clarify many of the concerns that employers faced prior to the Amendment being signed into law, there are still questions that have not been answered and questions that will arise as Illinois begins to see the implications of the Act. It is important that employers remain cautious when enacting workplace policies and always seek advice from legal counsel when dealing with issues arising from the passage of the Act.



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While in law school, Callie was a member of the *Northern Illinois University Law Review* where she was selected as Notes and Comments Editor. Callie also served as a judicial extern for the Honorable Frederick J. Kapala in the U.S. District Court for the Northern District of Illinois where she acquired invaluable research and writing experience as well as an understanding of the judicial perspective on litigation.

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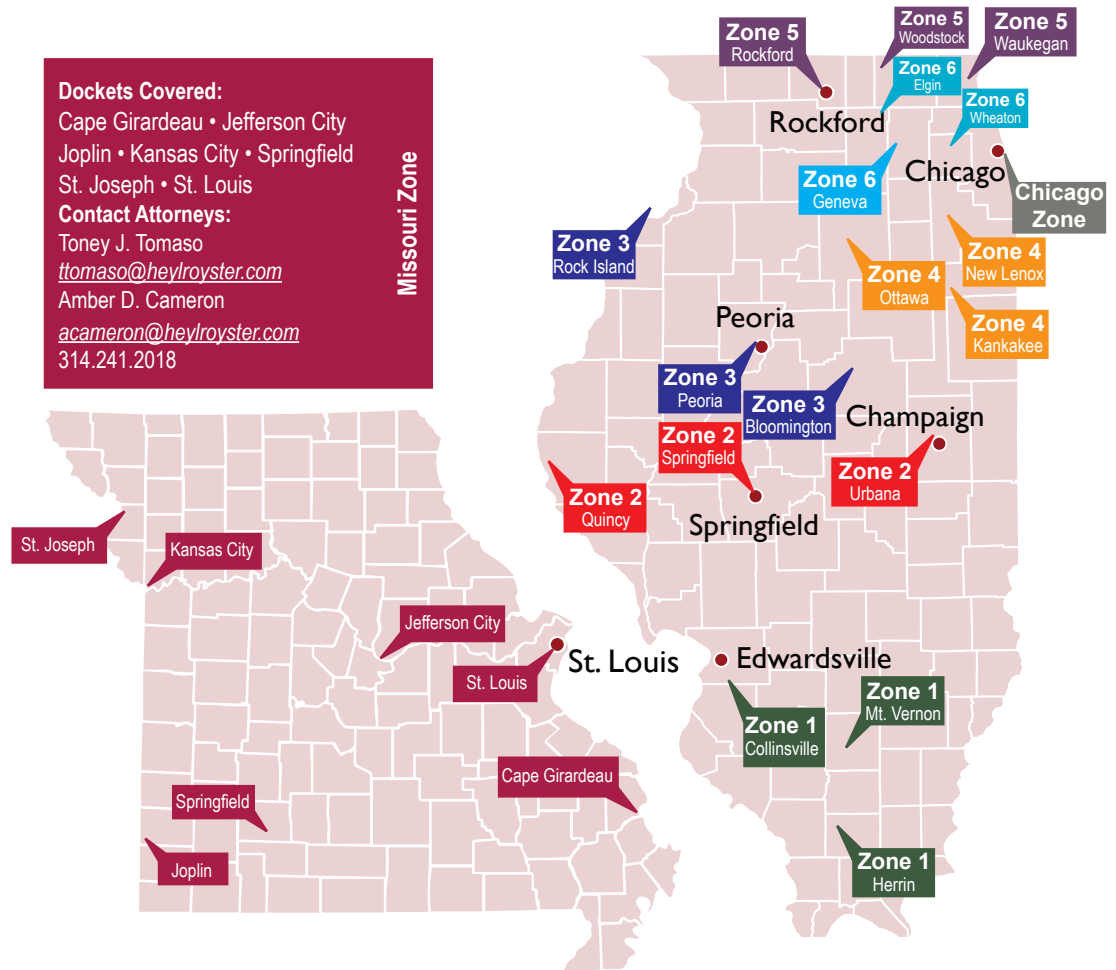
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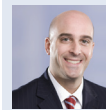
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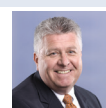
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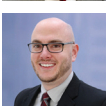
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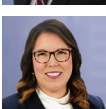
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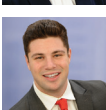
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