

Cannabis on the Job: What Employees Need to Know  
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Since the passage of Amendment XIV, employees and employers alike have sought guidance from lawyers like myself as to the Amendment's likely effect on employment. The law is still in its infancy and while we can look to what other states have done up to this point to guide us, the courts will ultimately decide whether Missouri will provide protections for employees who choose alternative plant medicine over prescription pharmaceuticals. This article is designed to give you a glimpse of the law as it stands now, how it could potentially change in the future, and how to legally protect yourself as an employee.

### **Current State of the Law**

Missouri's anti-discrimination statutes are encompassed in a body of law called the Missouri Human Rights Act or MHRA. It prohibits discrimination if based on any of seven (7) protected categories of persons, they are: 1) race; 2) color; 3) religion; 4) national origin; 5) sex; 6) ancestry; and 7) disability. It also prohibits associational discrimination based on the protected status of a family member. Although, for these purposes, I only plan to discuss a "qualifying patient" as being encompassed in the definition of a disabled person.

Amendment XIV carved out a very liberal list of conditions, which if diagnosed by an appropriate medical professional, allows you to apply for a patient card and possess medicinal marijuana. Oddly enough, the MHRA contains a definition of disabled person that appears to encompass and provide coverage to "qualifying patients." So, if a person meets this definition under the law, then the MHRA should recognize one as disabled. However, courts in other states have made similar arguments and the result has been split between states who have decided that disability laws protect qualifying patients and those who don't. Changes like these come about in one of two ways: 1) test cases must be brought to the courts where rulings will have to be forthcoming on these issues; or 2) the Missouri General Assembly will have to change the law to recognize "qualifying patients" as disabled or to add "qualifying patients" as a protected category of persons under the MHRA.

### **Random Workplace Drug Tests**

Many employees are given random workplace drug tests. In recent years it has become rather commonplace to either be tested initially at the time of employment, or randomly at intermittent intervals of employment. The thing that you need to keep in mind is that unlike some other states, the fact that Amendment XIV is an amendment to the Missouri Constitution makes it a fundamental right in the state of Missouri to possess medicinal cannabis. Essentially, what I am saying is a qualifying patient's right to possess and use medicinal cannabis trumps the right of the employer in most situations. There is an exception that I speak of below. However, this is not to say that an employer does not have the right to regulate your use of medical cannabis while you are working. They likely do.

So what does that mean for you, you ask? It means that if you are asked to give a random drug test, you need to comply with the request of your employer. If and when you test positive for cannabis, you need to be ready to present them with your patient card, and unfortunately, depending on the circumstances, you may need to hire a lawyer. If this advice seems eerily similar to what you might have received before the passage of Amendment XIV, you're likely right. You need to be aware though, that tests that measure the amount of THC in urine, do not test for impairment. In fact, there is no test that exists at this time in use in the marketplace that gauges impairment due to cannabis. And the objective of employers in regulating cannabis in the workplace should only be in preventing impairment of their employees on the job. Should you be terminated on that basis (impairment on the job), an employment attorney can and will assist you in your claims, which may vary, but will certainly include a claim for disability discrimination and a defensive argument that the testing itself did not test for or gauge impairment. Should your employer continue to prevent you from utilizing medicinal cannabis while off-duty, you will likely have a viable civil rights claim based on a violation of a state constitutional right as well. Just know that, until such time as Missouri affirmatively protects its qualifying patient workforce through legislation or until such time as the courts make decisions of binding precedent which protect the right of qualifying patients, those rights will remain at risk nonetheless.

The exception that I spoke of above relates to federal employment or federally regulated employment. Since cannabis is still federally illegal, if you work for a company that is regulated by the U.S. Department of Transportation (DOT) you're rather out of luck until such time as it becomes federally legal. My advice whether or not you're a federal employee is don't poke the bear. It is your right in this state to partake in this wonderful alternative plant medicine, but understand the risk you are taking when you talk to a co-worker or supervisor about that off-the-clock use. In this current social media age, we might be tempted to post about our status as a "qualifying patient" or our off-duty use, think better of it. This is knowledge that no one needs to have about you – and which if put out there could be used as evidence against you in a lawsuit where you're fighting for your livelihood. This information is best kept under wraps.

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