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February 22, 2022

### Mississippi Legalizes Medical Marijuana

On February 2, 2022, Republican Governor Tate Reeves signed the Mississippi Medical Cannabis Act (Act), which legalizes medical marijuana for the treatment of certain debilitating conditions. Those debilitating conditions include, among others, cancer, Parkinson's disease, HIV/AIDs, sickle cell anemia, Alzheimer's disease, post-traumatic stress disorder (PTSD), and autism. The law became effective immediately, making Mississippi the 37th state to legalize medical marijuana.

To legally obtain medical marijuana a person must have: (1) been diagnosed by a licensed medical practitioner, with whom they have a bona fide practitioner-patient relationship, as having a qualifying medical condition for which the practitioner believes the person would receive medical or palliative benefits from medical marijuana; (2) received a written certification of that diagnosis from the practitioner; and (3) been issued a registry identification card from the Mississippi State Department of Health.

Although medical marijuana is now legal, the Act contains a number of employer-friendly provisions:

- Employers are not required to permit, allow, or accommodate the use of medical marijuana or modify any working conditions for an employee who engages in the use of medical marijuana.
- The Act does not prohibit employers from refusing to hire, discharging, or otherwise disciplining employees because of their medical marijuana use—regardless of whether the individual was impaired or not.
- Employers may discipline employees who use medical marijuana in the workplace or work while under the influence.
- The Act does not limit an employer's ability to establish or enforce a drug testing policy, and it does not impair or impede any federal requirements or regulations adopted by the U.S. Department of Transportation (DOT), such as its drug and alcohol testing regulations.

The Act also addresses workers' compensation laws. Employers and their workers' compensation insurers are not required to reimburse any individual or entity for costs associated with the use of medical marijuana. Moreover, the Act does not alter or otherwise affect the workers' compensation premium discount available to employers who establish a drug-free workplace program in compliance with Mississippi law.

Even though the Act does not contain employment protections for medical marijuana cardholders, Mississippi employers should remain mindful that cardholders may pursue disability discrimination and accommodation claims related to their use of medical marijuana under the Americans with Disabilities Act (ADA). Individuals must have a qualifying medical condition to receive a medical marijuana card under the Act. Any of the medical conditions that would make an individual eligible for a card in Mississippi would likely be considered a disability under the ADA. Accordingly, employers should carefully examine whether to take an adverse employment action solely on the basis of medical marijuana use.

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