

FROM THE COURTS

Conn. Employers Keep Upper Hand With Legal Recreational Pot



SHUTTERSTOCK

The experts say the intent of the law was to decriminalize the use, but the actual wording of the law still gives employers lots of power.

by Robert Storage

Connecticut's new law legalizing recreational marijuana came with many questions and concerns for employers, who called their attorneys asking for a breakdown of what the legislation meant for them.

It came as a surprise to many employers that they still retained much of the rights related to whether or not drugs—such as marijuana—could be used in the workplace, or even outside the workplace.

While decriminalizing marijuana took effect July 1, many rules related to the workplace and cannabis don't take effect until a year later, in 2022.

Still, employment attorneys whose practice includes marijuana said they've been busy explaining the new rules and ramifications to their clients.

"Employers still have the upper hand," said Shipman & Goodwin's Sarah Westby, also a member of the firm's defense and labor relations group. "Even though, in a legal sense, you now can't be arrested for use, the employer can prohibit it in the workplace. A lot of people think they now have a free rein to use marijuana; there is a misconception out there. Employers still have a lot of power."

Experts said one must for employers, large and small, is to have a written policy in place as of July 1, 2022. That, they said, would protect employers legally, and would help them avoid headaches down the road.

"My big takeaway is that it is imperative to implement a clear written policy and to circulate it to your employees," said attorney Megan Carannante, co-chair of the labor employment and employee benefits department at Pullman & Comley.

Carannante said she's spoken to more than a dozen clients who have asked about the new law and had many questions. "We've worked with them to take a look at their drug-free workplace policies," she said.

Those interviewed for this story said, as it relates to the new law, there are two types of employers: exempt employers who can pretty much set their own drug policies and non-exempt employers.

Exempt employers include businesses like health care, aviation and trucking and jobs with a safety element to it. Those businesses don't have to have a written policy come next summer, although it's advised they do.

The biggest difference in the law, experts said, is that non-exempt employ-

ers can no longer refuse to hire an individual who failed a test prior to employment. But, there is a catch.

"Once you are a current employee for a non-exempt employer then the employer can, if they want to, regulate off-duty cannabis use, but only if they have a written policy in place. That provides notice to employees that they may face adverse actions if they engage in off-duty use," Carannante said.

So why, if marijuana is legal in Connecticut, can individuals still be penalized for using it?

The experts say the intent of the law was to decriminalize the use, but the actual wording of the law still gives employers lots of power.

Even though employers can take adverse action against those who use the drug, the question is: will they?

"Now that marijuana is legal, many people will test positive for recreational marijuana. It's a question of your workforce and the job," said Patricia Reilly, chairperson of Murtha Cullina's labor employment practice group. "If an applicant applies for a job that is not a high risk job and the employer is having difficulty filling positions, does the employer want to test for recreational marijuana? That might rule out some of the workforce and reduce the applicant pool. Do they want to do that?"

For some federal jobs, random drug testing is legal. In most cases, however, it's not.

But employers can test their workers on the spot if they have "reasonable suspicion" even without a written policy; however, it's best practice for employers to have a written policy that addresses all aspects of drug testing, Reilly said.

"The employer can do reasonable suspicion drug testing if it can articulate the ways in which the employee is impaired," Reilly said. "Are they spacing out? Are they unbalanced? Reasonable suspicion is sometimes hard to establish."

One takeaway from the new law is that it's possible more employers might actually test workers for marijuana under the "reasonable suspicion" guidelines, Reilly said.

Robert Storage covers legal trends, lawsuits and analysis for the Connecticut Law Tribune, an ALM affiliate of the Daily Business Review. Contact him at rstorage@alm.com. On Twitter: @RobertSCTLaw.



CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **COUNCIL ZONING MEETING** on **August 25, 2021, beginning at 6:00 PM** to consider a text amendment to the City's Land Development Code, by amending Chapter 74, "Miscellaneous and Supplementary Regulations," Article XVI, "Low Impact Development Practices" to update existent LID requirements. The City Council will consider this item for **FIRST READING**. The meeting will be held at the **City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166**.

The City of Doral proposes to adopt the following Ordinance:

ORDINANCE No. 2021-26

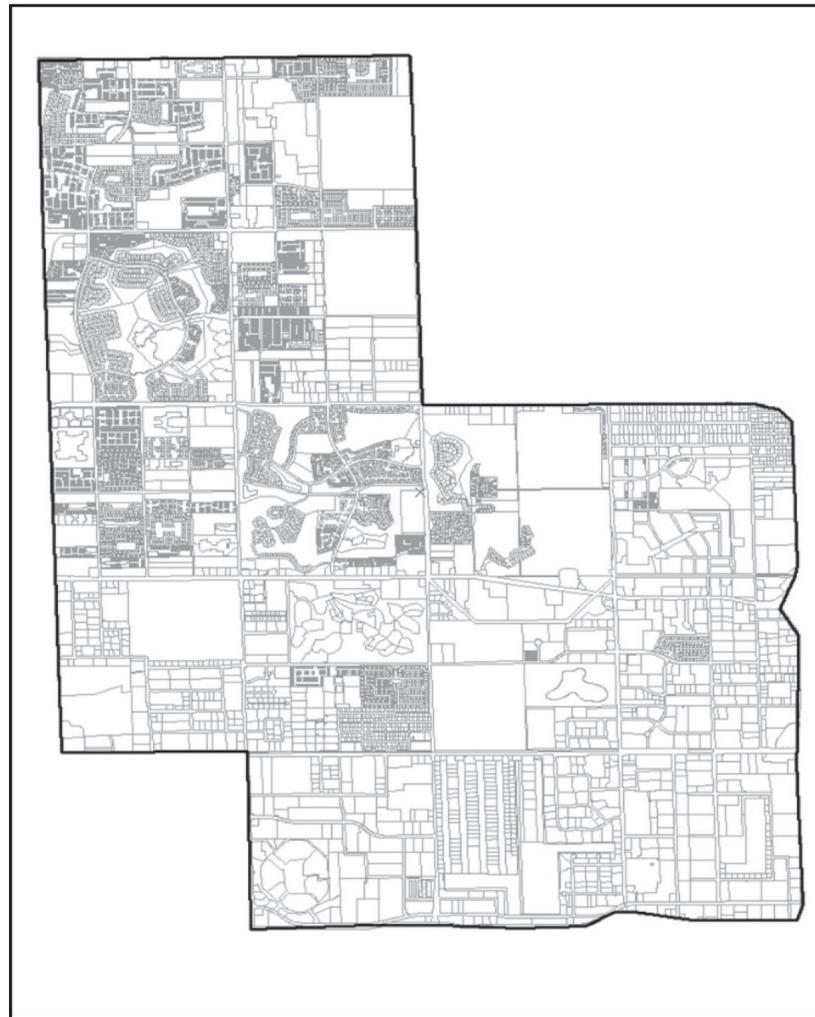
AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING/DENYING OF A TEXT AMENDMENT TO THE CITY'S LAND DEVELOPMENT CODE, BY AMENDING CHAPTER 74, "MISCELLANEOUS AND SUPPLEMENTARY REGULATIONS," ARTICLE XVI, "LOW IMPACT DEVELOPMENT PRACTICES," UPDATING EXISTENT LID REQUIREMENTS; PROVIDING FOR INCORPORATION INTO THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE

HEARING NO.: 21-08-DOR-09

APPLICANT: City of Doral

REQUEST: The City Manager's Office respectfully recommends that the Mayor and City Councilmembers approve a text amendment to the City's Land Development Code, amending Chapter 74, "Miscellaneous and Supplementary Regulations," Article XVI, "Low Impact Development Practices," to update existent LID requirements.

Location Map



Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes If a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, any person who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

Connie Diaz, MMC
City Clerk
City of Doral