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LEGAL BRIEFING: CORPORATE  
NEW YORK HAS LEGALIZED CANNABIS

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## New York has Legalized Cannabis, What does it Mean for Businesses & Employers?

On Wednesday March 31, 2021, after years of intense debate, New York State became the 15<sup>th</sup> state to legalize the adult use of recreational marijuana. Governor Andrew Cuomo signed the bill (the Marijuana Regulation and Taxation Act) a day after it passed the State Senate on Tuesday by a vote of 40 to 23 and the Assembly by a vote of 94 to 56, with all Republicans and about a dozen Democrats voting against the bill. The long-awaited legislation legalizes recreational marijuana for adults 21 and over. Criminal justice reform advocates are hopeful that the bill will help to cure some of the inequities of the system which has led to a disproportionate rate of incarceration for marijuana related offenses in minority communities.

Here are some important features of the bill:

- Individuals are now allowed to possess up to three ounces of marijuana for recreational purposes or 24 grams of concentrated forms of the drug, such as oils.
- New Yorkers are permitted to smoke marijuana in public wherever smoking tobacco is allowed, though localities and a new state agency could create regulations to control smoking cannabis more strictly in public.
- 18 months after the first regulated adult-use sale, it will allow adults to grow three mature and three immature plants at a time.
- Creates the Office of Cannabis Management to implement a regulatory framework that covers medical, adult-use and cannabinoid hemp.
- Legalizes the sale of marijuana with a 13 percent sales tax — which the state expects will raise \$350 million in tax revenue every year, in addition to providing some 60,000 jobs.

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- Of the sales tax revenue, 9% will go to the state — of which 40% will go to fund education, 40% will go to support communities of color that have suffered the most from the war on drugs, and 20% will go to fund anti-addiction efforts. The other 4% of the sales tax will go to local governments.
- Cities, towns, and villages can opt out of allowing adult-use marijuana retail dispensaries or on-site consumption licenses by passing a local law by December 31, 2021, or nine months after the effective date of the legislation. They cannot opt out of legalization.
- Municipalities that elect to allow retail stores will be entitled to 75% of the local share of the sales tax, with the remaining 25% going to the respective county.
- A new state cannabis board will prohibit advertising toward children, and retail stores and marijuana lounges cannot be located within hundreds of feet of a school or house of worship.
- The state will provide loans, grants, and incubator programs to encourage participation in the industry by people from minority communities, as well as small farmers, women, and disabled veterans.

New York will also start automatically expunging records of people with past convictions for marijuana-related offenses that would no longer be criminalized. Additionally, law enforcement in New York cannot arrest or prosecute anyone for possession under 3 ounces, however a police officer can still use the odor of marijuana as a reason to suspect a driver is intoxicated. However, the officer cannot use smell alone as justification for searching a car for contraband. The law will also allow those who have sold marijuana illegally in the past to have a chance to gain a legal sales license, while limiting permits issued to large multi-state marijuana companies already operating medical dispensaries in New York to just four additional stores, two of which must be in underserved communities.

With the advent of the new bill, employers should be thinking about marijuana and their workforce right now. Employers may have to reconsider workplace rules concerning the use of marijuana and refine drug testing policies. It is critical for business owners to be proactive and set proper guideline for their employees concerning marijuana use.

The State has also just launched a new website to educate the public on the licensure, distribution, sale, and taxation of cannabis in the State, which can be found at <https://cannabis.ny.gov>.

Our Firm has extensive experience counseling employers and businesses on a variety of legal and public policy issues. If you have any questions related to this Legal Briefing, please contact any member of our Firm at 585-730-4773.

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