Engage PEO Client Alert: Ohio

Changes to Ohio Drug-Testing Law in light of Cannabis Legislation

WHAT'S NEW: Effective December 7, 2023, individuals aged 21 and older are able to possess and recreationally use cannabis products in Ohio.

WHY IT MATTERS: Beginning December 7, Ohioans 21 and older are permitted to buy and consume up to 2.5 ounces of cannabis. However, recreational cannabis sales are not expected to begin for several months.

Compared to other states, Ohio's new law currently gives a lot of deference to employers when it comes to managing recreational marijuana use among their employees. For example, employers may set their own rules regarding cannabis use, including maintaining "zero-tolerance" and "drug-free workplace" policies.

Moreover, employers **may continue** to prohibit cannabis use and may continue to test applicants and current employees for cannabis use in accordance with their policies. Additionally, employers may continue to test for cannabis in reasonable-suspicion testing (such as after a work-related accident or upon reasonable belief that an employee has violated a written policy's cannabis restrictions while on duty).

Ohio employers should note, however, that a positive drug test alone is insufficient in establishing impairment. Accordingly, decisions about whether an individual is under the influence at work require a combination of drug testing and trained observance in order to substantiate a termination for recreational cannabis use.

Furthermore, the new law will not require employers to permit or accommodate an employee's use, possession, or distribution of adult-use cannabis. Employers may instead prohibit that conduct in a written policy.

Finally, the new law clearly states that the new law will not impact positions that are subject to the U.S. Department of Transportation's or the Federal Aviation Administration's drug-free workplace requirements.

WHAT EMPLOYERS SHOULD DO: Ohio employers should review their hiring and drug-testing policies to ensure compliance with this new law. They should also confirm that supervisors and managers are trained in how to administer disciplinary actions and terminations in compliance with the new law.