

Legal Update

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Delaware Legalizes Recreational Marijuana

Delaware's governor has allowed [House Bill 1](#) to be enacted without a signature, making Delaware the 22nd state to legalize marijuana for adult recreational use as of April 22, 2023. The governor also allowed [House Bill 2](#), which regulates recreational marijuana sales in the state, to go into effect without a signature on April 26, 2023. Medical marijuana has been legal in Delaware since 2011.

House Bill 1—Marijuana Legalized for Adults 21 and Older

House Bill 1 removed all penalties for possession, use, display and purchase of up to 1 ounce of marijuana, 12 grams of marijuana concentrate and marijuana accessories for adults aged 21 and older. It also allows these adults to transport marijuana and related items in a vehicle as long as the items are kept in a closed container or otherwise not readily accessible to anyone inside the vehicle.

House Bill 2—Delaware Marijuana Control Act

House Bill 2, also known as the Delaware Marijuana Control Act (DMCA), creates a regulatory framework for the cultivation and retail sales of recreational marijuana in the state. It also creates a new agency, the Delaware Marijuana Control Act Oversight Committee, to implement the new system of cultivation and sales.

Employer Impact

The DMCA specifies that it does not impact or impose any requirement or restriction on employers with respect to terms and conditions of employment, including accommodation, policies and discipline. In general, this means that employers may still take adverse employment actions against individuals based solely on a positive drug test for marijuana. However, employers should keep in mind that the [Delaware Medical Marijuana Act](#) prohibits adverse actions against an authorized medical marijuana user based on a positive test for marijuana unless a regulatory or licensing-related exception applies or the authorized user possessed, used or was impaired at work.

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Important Information

April 22, 2023

A new Delaware law that allows adults aged 21 and older to possess and use up to 1 ounce of marijuana and 12 grams of marijuana concentrate in the state went into effect on this date.

April 26, 2023

Another new Delaware law, which regulates the adult-use recreational marijuana sales in the state, went into effect on this date.

Employers may still have policies that prohibit off-duty recreational (but not off-duty medical) marijuana use.