

# Understanding Ohio's New Recreational Marijuana Law

by

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## I. OHIO LEGALIZES RECREATIONAL MARIJUANA

### A. Legal Overview

On November 7, 2023, Ohio voters legalized the purchase and use of recreational marijuana for adults 21 and older, becoming the 24th state to do so. The new law, “An Act to Control and Regulate Adult Use Cannabis” (the “Act”), went into effect on December 7, 2023.

Fortunately for employers, the Act allows employers to retain the following rights:

- Employers are not required to permit or accommodate an employee's use, possession, or distribution of marijuana.
- Employers are still permitted to refuse to hire, discharge, discipline, or take other adverse employment action against an individual because of that individual's use, possession, or distribution of marijuana in the workplace.
- Employers are still permitted to establish and enforce drug testing policies, drug-free workplace policies, or zero-tolerance drug policies.
- If an employer terminates an employee because of the employee's marijuana use in violation of the employer's drug policies, the employee will be considered to have been discharged for just cause for purposes of unemployment compensation.
- Nothing in the Act interferes with any federal restrictions on employment.

Further, nothing in the Act gives applicants or employees the right to file suit against an employer for taking any adverse action against them for using marijuana.

## **B. How Will Legalized Marijuana Impact Ohio Employers?**

While the Act does not require employers to accommodate employees' use of recreational marijuana, the legalization of recreational marijuana will impact Ohio employers in several ways:

- Employers who regularly test for marijuana are likely to see an uptick in positive drug test results. This could lead to challenges in recruiting and retaining employees.
- Employers may see an increase in workplace accidents, performance issues, and workplace conduct violations, as more employees may report to work under the influence of recreational marijuana.
- As marijuana becomes less controversial, employers who maintain zero-tolerance policies may have a harder time recruiting and retaining employees.

## **C. Next Steps for Employers**

Below are some steps that employers should consider taking in light of this new law:

- **Update Drug Policies**

Employers should update their policies to provide clear notice to employees that even though marijuana is now legal under state law, its possession and use in the workplace is prohibited under company policy.

- **Re-Evaluate Drug Testing Procedures**

Employers should consider updating their drug testing procedures, especially if they find that an increase in positive marijuana test results is making it difficult to recruit or retain employees. In determining when to test for marijuana, employers should keep in mind that drug tests for marijuana do not detect current marijuana intoxication. A urine drug screening for marijuana may be positive for several weeks after a person last used marijuana.

When updating policies, employers must ensure that they comply with any mandatory testing requirements that apply to them under state or federal regulations, such as Department of Transportation regulations.

- **Offer Training**

Supervisors and human resources are likely to be called upon to answer employee questions about the Act and how it impacts the workplace. Employers should train their human resources employees and supervisors on the new law and the employer's policies regarding drug use, drug testing, and disciplinary action.

Lastly, employers should keep in mind that because the Act added a chapter to the Ohio Revised Code rather than amending the Ohio Constitution, it may be amended by the Ohio General Assembly. Some members of the General Assembly have expressed an interest in amending or repealing certain aspects of the law.

## II. STATE MEDICAL MARIJUANA LAWS DO NOT TRUMP EMPLOYER POLICIES

In Casias v Wal-Mart Stores, Inc., No. 11-1227 (6<sup>th</sup> Cir. 2012), Joseph Casias was an employee of Wal-Mart for the previous 5 years and was named “associate of the year” in 2008. Casias, who suffered from sinus cancer and an inoperable brain tumor, was required to take a drug after injuring himself at work. As expected, due to his status as a medical marijuana patient, Casias failed the drug test and his employment was terminated. Mr. Casias sued Wal-Mart in state court for wrongful discharge, claiming that Wal-Mart’s application of its drug use policy to him violated the Michigan Medical Marihuana Act (“MMMA”). Wal-Mart had the case transferred to federal court and moved to dismiss the case for failure to state a claim.

The Federal District Court found that the MMMA does not regulate private employment and granted Wal-Mart’s motion to dismiss. Casias appealed to the 6<sup>th</sup> Circuit Court of Appeals. The 6<sup>th</sup> Circuit found for Wal-Mart.

The 6<sup>th</sup> Circuit Court found that the MMMA merely provides a defense to criminal prosecution or other adverse actions by the state:

**All the MMMA does is give some people limited protection from prosecution by the state, or from other adverse state action in carefully limited medical marijuana situations.**

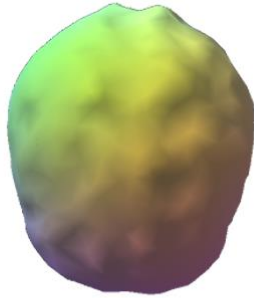
The court further explained that adopting Casias’ argument would create an entirely new protected employee class in Michigan and “mark a radical departure from the general rule of at-will employment in Michigan.”

Casias argued Section 4’s use of the term “business” expands the MMMA protections to private employment. Section 4, in relevant part, states:

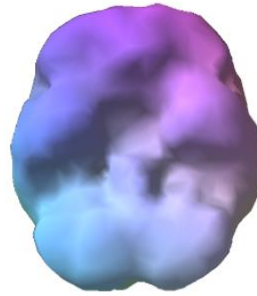
**A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act . . .**

The Court disagreed, finding that the word “business” is not meant to stand alone, but instead, modifies the phrase “occupational or professional licensing board or bureau.” Thus, the statute was intended to protect against disciplinary actions by state board or bureaus, not regulate all private employers.

**What Does A “Normal” Brain Look Like?**  
**SURFACE BLOOD FLOW SCANS**



**(FOREHEAD)  
TOP SURFACE VIEW**

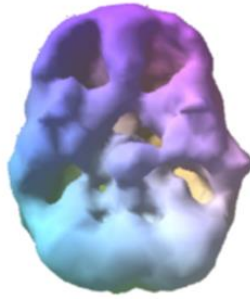


**(BASE OF HEAD)  
UNDER VIEW**

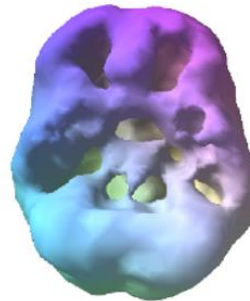


**ALCOHOL AND DRUG ABUSE**

**Marijuana**



**18 yr. old:  
3 year history of  
4 x week use**

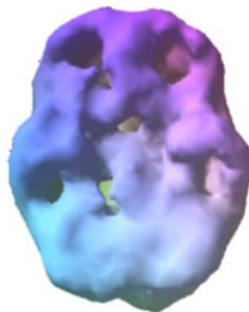


**16 yr. old:  
2 year history of  
daily abuse**

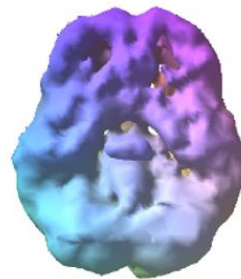


**ALCOHOL AND DRUG ABUSE**

**Marijuana**



**38 yr. old:  
12 years of daily use**



**28 yr. old:  
10 years of  
mostly weekend use**



### III. NOTICE TO EMPLOYEES

Even though several states have legalized the use of marijuana, its possession and use in the workplace is prohibited under Company policy.

or

Even though several states have legalized the use of marijuana, its possession and use by employees is prohibited under Company policy, where allowed by law.

or

Since the use of marijuana has been legalized in many states, the Company will permit the off-duty use of marijuana by employees with prior written permission. The Company will decide if such off-duty use will be permitted considering such factors as the duties performed by the employee, the department where the employee is assigned and other such factors.

### IV. TYPES OF TESTING

*Pre-Employment*

*Reasonable Suspicion*

*Post-Accident with Reasonable Suspicion*

*Random*

*Follow Up Testing After Return To  
Work From Assessment Or Treatment*

# **Understanding Ohio's New Recreational Marijuana Law**

**1 Specified Credit Hours**

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- 3. *TWO TYPES OF SEXUAL HARASSMENT 1 minute***
- 4. *QUID PRO QUO 3 minutes***
- 5. *HOSTILE ENVIRONMENT 11 minutes***
- 6. *EMOTIONAL INTELLIGENCE AND A SAFE ENVIRONMENT 11 minutes***
- 7. *WHAT IS OFFENSIVE 16 minutes***
- 8. *WHAT I DO ON MY OWN TIME IS MY OWN BUSINESS 5 minutes***
- 9. *SOCIAL MEDIA IS NOT A BULLY PULPIT 2 minutes***
- 10. *CONFLICT RESOLUTION = TOLERANCE & EPR 19 minutes***
- 11. *ATTACKERS, RETREATERS & BYSTANDER INTERVENTION 7 minutes***
- 12. *RETALIATION 2 minute***

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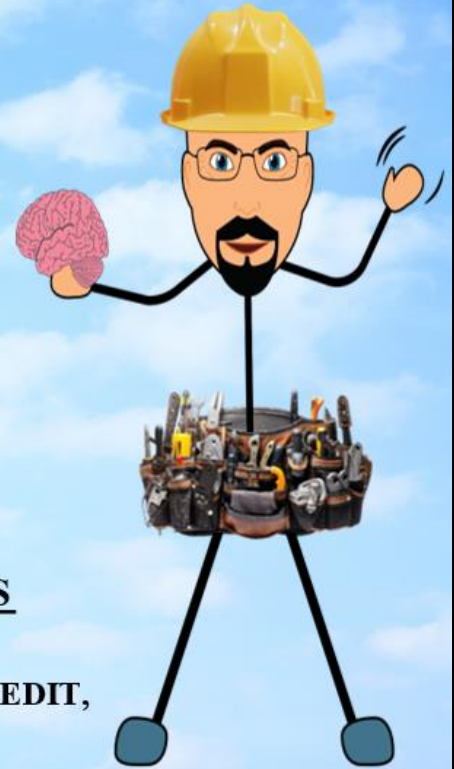
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- 3. PART 2 UNDERSTANDING & BUILDING YOUR EMOTIONAL INTELLIGENCE 1.5 hours**
- 4. EMOTIONAL INTELLIGENCE & BUILDING A SAFE CULTURE (TOLERANCE) 1.5 hours**
- 5. CONFLICT RESOLUTION ATTACKING and RETREATING 1.5 hours**
- 6. CONFLICT RESOLUTION EPR 1.5 hours**
- 7. CONDUCTING A LEGAL AND EFFECTIVE INTERVIEW 1.5 hours**
- 8. DRAFTING AND DELIVERING EFFECTIVE WRITTEN WARNINGS 1.5 hours**
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**If you have any questions at all,  
please feel free to shoot Scott an email or give him a call:  
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## ***Scott's Bio***

Scott Warrick ([www.scottwarrick.com](http://www.scottwarrick.com)) is a practicing Employment Law Attorney, Human Resource Professional and three-time best-selling author with over 40 years of hands-on experience. Scott uses his unique background to help organizations get where they want to go, which includes coaching and training managers and employees on site in his own unique, practical and entertaining style.

Scott combines the areas of law and human resources to help organizations in “Solving Employee Problems **BEFORE** They Start.” Scott’s goal is **NOT** to win lawsuits. Instead, Scott’s goal is to **PREVENT THEM** while improving **EMPLOYEE MORALE**.

Scott’s first book, [\*\*Solve Employee Problems Before They Start: Resolving Conflict in the Real World\*\*](#), is a #1 Best Seller for Business and Conflict Resolution. It was also named by EGLOBALIS as one of the best global Customer and Employee books for 2020-2021. Scott’s next book, [\*\*Living The Five Skills of Tolerance\*\*](#), is also a #1 Best Seller in 13 categories on Amazon. His most recent book, [\*\*Healing The Human Brain\*\*](#), is an International Best Seller in 14 categories with sales in over a dozen countries worldwide.

[\*\*Scott Trains Managers & Employees ON-SITE in over 50 topics\*\*](#), all of which are customized for each client. Scott is a national speaker who travels the country presenting seminars on such topics as Healing The Human Brain, Employment Law, Conflict Resolution, Leadership and Tolerance, to mention a few.

Scott is also a seven-time SHRM National Diversity Conference presenter. In 2023, he presented his groundbreaking “**TOLERANCE & BRAIN HEALTH**” program.

Scott’s [\*\*MASTER HR TOOL KIT SUBSCRIPTION\*\*](#) is a favorite for anyone wanting to learn Employment Law and run an HR Department.

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Scott was named one of Business First’s 20 People To Know In HR by CEO Magazine’ and a Human Resources “Superstar” in 2008. Scott also received the Linda Kerns Award for Outstanding Creativity in HR and the Ohio State Human Resource Council’s David Prize for Creativity in HR Management.

Scott’s academic background and awards include Capital University College of Law (Class Valedictorian (1st out of 233) and Summa Cum Laude), Master of Labor & Human Resources and B.A. in Organizational Communication from The Ohio State University.

For more information on Scott, just go to [www.scottwarrick.com](http://www.scottwarrick.com).