

Labor & Employment

By: Graydon on September 28, 2016 on graydon.law

Ohio Legalizes Medical Marijuana. Gov. John Kasich signed House Bill 523 into law this month, making Ohio the 25th state to legalize medical marijuana. The law goes into effect 90 days after the bill is officially filed with the secretary of state, making medical marijuana use in Ohio legal sometime in early September. The Ohio law prohibits smoking or growing marijuana at home but allows cannabis oils, tinctures, patches, edibles and plant material to be used to treat a variety of conditions and sold in state-licensed dispensaries. Patients will have an affirmative defense against prosecution for marijuana possession charges if they have written permission from their doctor to use marijuana in a form allowed under the law. Employers will need to review their policies, but under many circumstances may still discipline or terminate employees using medical marijuana at the workplace. Now is the time to dust off your handbooks and policies to address this new law.

Don't Let Your Guard Down. Last month, President Obama signed into law the highly anticipated Defend Trade Secrets Act. Effective immediately, the DTSA provides a federal private cause of action for trade secrets theft. The Act also requires that employers, in certain circumstances, provide employees notice of the DTSA's newly-established whistleblower protection. The notification requirement is effective immediately. As a result, employers need to revise company policies, employment agreements, consulting agreements, and independent contractor agreements that contain trade secret or confidentiality provisions.

Double Fine. Effective July 5, 2016, employers covered by Title VII, ADA or GINA that fail to post notices describing the pertinent provisions of Title VII, ADA or GINA in a prominent and accessible place will face increased penalties. The maximum penalty will increase from \$210 to \$525. Workplace poster requirements vary by statute. With the increased penalty, employers should take a close look to ensure compliance and get to posting.

EEOC Goes Back to Basics. Earlier this month, the EEOC asked for input on its proposed enforcement guidance covering national origin discrimination. The last time the agency addressed national origin discrimination was 2002. Due to the many legal developments since that time, the EEOC thought it needed a refresh. The 57 page guidance addresses what 'national origin' discrimination is, how the law applies in specific workplace situations and how the protected class 2 overlaps with other Title VII protected classes. For example, national origin often overlaps with race, color or religious discrimination because a national

origin group may be associated or perceived to be associated with a particular religion or race. Since the proposed enforcement guidance provides examples of what the EEOC perceives as national origin discrimination, employers are encouraged to review the guidance and provide input. Once released, the final guidance will replace the previous 2002 guidance.

Plaintiffs Get the Green Light. Plaintiffs alleging discrimination have a limited time after the alleged discrimination took place to file a charge of discrimination. Plaintiffs filing outside the time period are unable to move forward with their claim. But when does the clock start in a case of constructive discharge where an employee's working conditions become so intolerable that the employee feels compelled to resign? In a recent case, the U.S. Supreme Court held that the employee's resignation triggered the limitations period for a constructive discharge claim. Although the employer argued that the worker's claims were time barred because the clock started when the alleged discriminatory actions took place, the Supreme Court started the clock on the day the worker provided the employer with his notice of resignation. This decision means employees have a slightly longer window to file discrimination charges.

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