

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Cannabis Regulation and Tax Act is amended  
5 by changing Section 10-50 as follows:

6 (410 ILCS 705/10-50)

7 Sec. 10-50. Employment; employer liability.

8 ~~(a) Nothing in this Act shall prohibit an employer from~~  
9 ~~adopting reasonable zero tolerance or drug free workplace~~  
10 ~~policies, or employment policies concerning drug testing,~~  
11 ~~smoking, consumption, storage, or use of cannabis in the~~  
12 ~~workplace or while on call provided that the policy is applied~~  
13 ~~in a nondiscriminatory manner.~~

14 ~~(b) Nothing in this Act shall require an employer to~~  
15 ~~permit an employee to be under the influence of or use cannabis~~  
16 ~~in the employer's workplace or while performing the employee's~~  
17 ~~job duties or while on call.~~

18 ~~(c) Nothing in this Act shall limit or prevent an employer~~  
19 ~~from disciplining an employee or terminating employment of an~~  
20 ~~employee for violating an employer's employment policies or~~  
21 ~~workplace drug policy.~~

22 ~~(d) An employer may consider an employee to be impaired or~~  
23 ~~under the influence of cannabis if the employer has a good~~

1 ~~faith belief that an employee manifests specific, articulable~~  
2 ~~symptoms while working that decrease or lessen the employee's~~  
3 ~~performance of the duties or tasks of the employee's job~~  
4 ~~position, including symptoms of the employee's speech,~~  
5 ~~physical dexterity, agility, coordination, demeanor,~~  
6 ~~irrational or unusual behavior, or negligence or carelessness~~  
7 ~~in operating equipment or machinery; disregard for the safety~~  
8 ~~of the employee or others, or involvement in any accident that~~  
9 ~~results in serious damage to equipment or property; disruption~~  
10 ~~of a production or manufacturing process; or carelessness that~~  
11 ~~results in any injury to the employee or others. If an employer~~  
12 ~~elects to discipline an employee on the basis that the~~  
13 ~~employee is under the influence or impaired by cannabis, the~~  
14 ~~employer must afford the employee a reasonable opportunity to~~  
15 ~~contest the basis of the determination.~~

16 ~~(e)~~ Nothing in this Act shall be construed to create or  
17 imply a cause of action under this Act for any person against  
18 an employer for:

19 (1) actions taken pursuant to an employer's ~~reasonable~~  
20 workplace drug policy that complies with the Right to  
21 Privacy in the Workplace Act ~~, including but not limited~~  
22 ~~to subjecting an employee or applicant to reasonable drug~~  
23 ~~and alcohol testing, reasonable and nondiscriminatory~~  
24 ~~random drug testing, and discipline, termination of~~  
25 ~~employment, or withdrawal of a job offer due to a failure~~  
26 ~~of a drug test;~~

1           (2) actions based on the employer's good faith belief  
2           that an employee used or possessed cannabis in the  
3           employer's workplace or while performing the employee's  
4           job duties or while on call in violation of the employer's  
5           employment policies;

6           (3) actions, including discipline or termination of  
7           employment, based on the employer's good faith belief that  
8           an employee was impaired as a result of the use of  
9           cannabis, or under the influence of cannabis, while at the  
10          employer's workplace or while performing the employee's  
11          job duties or while on call in violation of the employer's  
12          workplace drug policy; or

13          (4) injury, loss, or liability to a third party if the  
14          employer neither knew nor had reason to know that the  
15          employee was impaired.

16          ~~(f) Nothing in this Act shall be construed to enhance or~~  
17          ~~diminish protections afforded by any other law, including but~~  
18          ~~not limited to the Compassionate Use of Medical Cannabis~~  
19          ~~Program Act or the Opioid Alternative Pilot Program.~~

20          ~~(g) Nothing in this Act shall be construed to interfere~~  
21          ~~with any federal, State, or local restrictions on employment~~  
22          ~~including, but not limited to, the United States Department of~~  
23          ~~Transportation regulation 49 CFR 40.151(e) or impact an~~  
24          ~~employer's ability to comply with federal or State law or~~  
25          ~~cause it to lose a federal or State contract or funding.~~

26          ~~(h) As used in this Section, "workplace" means the~~

1 ~~employer's premises, including any building, real property,~~  
2 ~~and parking area under the control of the employer or area used~~  
3 ~~by an employee while in the performance of the employee's job~~  
4 ~~duties, and vehicles, whether leased, rented, or owned.~~  
5 ~~"Workplace" may be further defined by the employer's written~~  
6 ~~employment policy, provided that the policy is consistent with~~  
7 ~~this Section.~~

8 ~~(i) For purposes of this Section, an employee is deemed~~  
9 ~~"on call" when such employee is scheduled with at least 24~~  
10 ~~hours' notice by his or her employer to be on standby or~~  
11 ~~otherwise responsible for performing tasks related to his or~~  
12 ~~her employment either at the employer's premises or other~~  
13 ~~previously designated location by his or her employer or~~  
14 ~~supervisor to perform a work-related task.~~

15 (Source: P.A. 101-27, eff. 6-25-19; 101-593, eff. 12-4-19.)

16 Section 10. The Right to Privacy in the Workplace Act is  
17 amended by changing Section 5 as follows:

18 (820 ILCS 55/5) (from Ch. 48, par. 2855)

19 Sec. 5. Discrimination for use of lawful products  
20 prohibited.

21 (a) Except as otherwise specifically provided by law,  
22 ~~including Section 10-50 of the Cannabis Regulation and Tax~~  
23 ~~Act,~~ and except as provided in subsections (a-5), (b), and  
24 (c), (d), (e), (f), (g), (h), and (i) of this Section, it shall

1 be unlawful for an employer to refuse to hire or to discharge  
2 any individual, or otherwise disadvantage any individual, with  
3 respect to compensation, terms, conditions or privileges of  
4 employment because:

5 (1) the individual uses lawful products off the  
6 premises of the employer's workplace ~~employer~~ during  
7 nonworking hours and hours the individual is not on-call  
8 ~~non-call hours; or-~~

9 (2) the results of an individual's drug test indicate  
10 the presence of tetrahydrocannabinol, unless:

11 (A) the employee works in a safety sensitive  
12 position;

13 (B) the applicant or employee demonstrates  
14 impairment as provided in subsection (f); or

15 (C) the test results for tetrahydrocannabinol  
16 meets or exceeds the legal limits set forth in Section  
17 11-501.2 of the Illinois Vehicle Code.

18 Except as provided in paragraphs (1) and (2), nothing in  
19 this Act prohibits an employer from (i) enforcing a  
20 pre-employment drug testing policy, random drug testing  
21 policy, or zero-tolerance or drug-free workplace policy or  
22 from disciplining an employee or withdrawing a job offer from  
23 an applicant for violating such a policy; (ii) disciplining or  
24 discharging an employee whose use of a lawful product  
25 adversely affects or impairs the employee's job performance,  
26 conduct, or ability to safely perform the assigned job duties

1 in the employer's workplace during working hours or hours the  
2 individual is on call; or (iii) implementing and enforcing  
3 workplace policies regarding the possession, use, or  
4 impairment of lawful products in the employer's workplace  
5 during working hours or hours the individual is on call.

6 (a-5) As used in this Section:

7 (1) "Lawful ~~lawful~~ products" means products that are  
8 legal for the employee to use under state law.

9 (2) "Workplace" means the employer's premises,  
10 including any building, real property, and parking area  
11 under the control of the employer or area used by an  
12 employee while in the performance of the employee's job  
13 duties.

14 (3) "On-call" means ~~For purposes of this Section, an~~  
15 ~~employee is deemed on-call~~ when the employee is scheduled  
16 with at least 24 hours' notice by his or her employer to be  
17 on standby or otherwise responsible for performing tasks  
18 related to his or her employment either at the employer's  
19 workplace premises or other previously designated location  
20 by his or her employer or supervisor to perform a  
21 work-related task.

22 (4) "Safety sensitive position" means a position that  
23 meets all of the following requirements:

24 (A) is designated as a safety sensitive position  
25 in writing by the employer;

26 (B) requires tasks and duties that could

1 reasonably result in injury, illness, death, or damage  
2 to property if the person performing them is under the  
3 influence of tetrahydrocannabinol; and

4 (C) requires one or more of the following  
5 responsibilities:

6 (i) carrying a firearm or working for a law  
7 enforcement agency in a capacity that impacts the  
8 safety of others;

9 (ii) performing medical procedures or  
10 emergency services;

11 (iii) working with hazardous or flammable  
12 materials, controlled substances, or  
13 pharmaceuticals;

14 (iv) working around heavy machinery in a  
15 retail distribution center; or

16 (v) operating, repairing, maintaining,  
17 monitoring, or designing one or more of the  
18 following: (I) heavy machinery; (II) aircraft;  
19 (III) motorized watercrafts; (IV) motor vehicles;  
20 or (V) critical services and infrastructure. As  
21 used in this subparagraph, "critical services and  
22 infrastructure" means physical and cyber systems  
23 and assets that are so vital to the public that  
24 their incapacity, compromise, or destruction would  
25 have a debilitating impact on physical or economic  
26 security, public health, or safety.

1           (5) "Retail distribution center" means a distribution  
2           center where products are received and temporarily stored  
3           and where orders for products are packaged or repackaged  
4           for distribution to resellers, wholesalers, or consumers.  
5           "Retail distribution center" does not mean a warehouse  
6           used only for purposes of storing products.

7           (b) This Section does not apply to any employer that ~~is a~~  
8           ~~non profit organization that~~, as one of its primary purposes  
9           or objectives, discourages the use of one or more lawful  
10          products by the general public. ~~This Section does not apply to~~  
11          ~~the use of those lawful products which impairs an employee's~~  
12          ~~ability to perform the employee's assigned duties.~~

13          (c) It is not a violation of this Section for an employer  
14          to offer, impose or have in effect a health, disability or life  
15          insurance policy that makes distinctions between employees for  
16          the type of coverage or the price of coverage based upon the  
17          employees' use of lawful products provided that:

18                 (1) differential premium rates charged employees  
19                 reflect a differential cost to the employer; and

20                 (2) employers provide employees with a statement  
21                 delineating the differential rates used by insurance  
22                 carriers.

23          (d) Nothing in this Act limits an employer's ability to  
24          withdraw a job offer from an applicant or discipline an  
25          employee for failing a drug test if failing to do so would put  
26          the employer in violation of federal or State law or cause it



1 to lose a federal or State contract or funding.

2 (e) Nothing in this Act shall be construed to create a  
3 defense for a third party who fails a drug test.

4 (f) An employer may consider an applicant or employee to  
5 be impaired when:

6 (1) he or she tests positive for tetrahydrocannabinol  
7 at a level that meets or exceeds the legal limits set forth  
8 in Section 11-501.2 of the Illinois Vehicle Code; or

9 (2) manifests specific, articulable symptoms or  
10 behavior while working that decrease or lessen his or her  
11 performance of the duties or tasks of the employee's job  
12 position, including manifestations of the employee's  
13 speech, physical dexterity, agility, coordination,  
14 demeanor, irrational or unusual behavior, negligence or  
15 carelessness in operating equipment or machinery,  
16 disregard for the safety of the employee or others,  
17 involvement in an accident that results in serious damage  
18 to equipment or property, disruption of a production or  
19 manufacturing process, or carelessness that results in any  
20 injury to the employee or others.

21 If an employer elects to withdraw a job offer from an  
22 applicant or discipline an employee because the employer  
23 considers the applicant or employee to be impaired, it must  
24 afford the applicant or employee a reasonable opportunity to  
25 contest the basis of the determination.

26 (g) Nothing in this Act shall be construed to create or

1 imply a cause of action for any person against an employer for:

2 (1) actions based on the employer's good faith belief  
3 that an employee used or possessed tetrahydrocannabinol  
4 while at the employer's workplace or during the hours of  
5 employment;

6 (2) actions based on the employer's good faith belief  
7 that an employee was impaired while working, while working  
8 at the employer's workplace during the hours of  
9 employment;

10 (3) discipline or termination of the employment of an  
11 employee or withdrawal of a job offer from an applicant  
12 when enforcing a drug policy that complies with this  
13 Section; or

14 (4) injury or loss to a third party if the employer  
15 neither knew nor had reason to know that the employee was  
16 impaired.

17 (h) Nothing in this Act shall be construed to interfere  
18 with any federal restrictions on employment, including, but  
19 not limited to, the United States Department of Transportation  
20 regulation 49 CFR 40.151(e).

21 (i) Nothing in this Act shall be construed to interfere  
22 with the application of the Illinois Workers' Compensation  
23 Act, specifically, but without limitation, Section 11 of the  
24 Workers' Compensation Act, the Workers' Occupational Diseases  
25 Act, or the rules of practice before the Illinois Workers'  
26 Compensation Commission.

1 (Source: P.A. 101-27, eff. 6-25-19.)