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What Employers need to know about the Legalization of Cannabis

Dear Reader,

In spring 2024, the law on the controlled handling of cannabis and the amendment of other regulations (CanG) was passed. It allows the possession, cultivation and consumption of cannabis for private individuals and cultivation associations within certain limits. The following article is intended to provide information about the new situation in the workplace and highlight employers' options and obligations in this regard.

I. Cannabis Use before, during and after Work

There is no general legal ban on cannabis use at work. At most, consumption falls under existing bans for certain occupational groups, for example in the transportation of passengers or goods or the care of persons. However, all employees are subject to the general secondary obligation not to put themselves in a state in which they can no longer properly fulfill their duties under the employment contract or in which they themselves or others could be endangered. Beyond these limits, cannabis consumption is also permitted before starting work and during breaks - even on the company premises themselves.

However, employers can issue a company cannabis ban by issuing any necessary instructions. This is recommended, for example, due to Section 55 (1) ArbStättV, according to which an employer must now also protect non-smoking employees from the health risks posed by smoke and vapors from cannabis products. There are often already regulations relating to alcohol and drugs, for example in employment contracts or works agreements. These should be checked to see whether

they also cover the consumption of cannabis. If necessary, the works council's participation rights pursuant to Section 87 (1) No. 1, 7 BetrVG must be observed when new regulations are issued or revised.

Outside of working hours and outside of the company, however, a ban by the employer is generally not possible; this may only be different if conclusions can be drawn about the employer and the employee's behavior casts a negative light on him.

II. Legal Situation in the Event of Infringements

If an employee violates the above regulations, they should be released immediately, because according to Section 7 (2) DGUVV1, employers may not employ insured persons who are clearly unable to carry out work without risk to themselves or others. If they do so, they risk losing the protection of the statutory accident insurance. In addition, the employee should be given a written warning, explicitly stating that the behavior is a breach of contractual obligations and threatening to terminate the contract if it is repeated. This is the only way to provide a solid basis for a future (behavioral or personal) dismissal.

III. Practical Problems

In practice, cannabis use poses major difficulties for employers, despite the clear legal situation. The first problem is the recognizability of any cannabis use or an associated lack of fitness for work. Even if there are certain symptoms that are attributed to cannabis use (e.g. increased sensitivity to light, impairment of short-term memory, indifference to danger), there is still no generally valid list of specific signs or symptoms of failure. Reliable



statements on dose and effect, threshold values and degradation values are also sometimes sought in vain. Against this background, absolute cannabis bans are highly recommended, as then only the consumption itself is in question, but not its extent. As it is the responsibility of employees in managerial positions to identify any cannabis use, they should be made aware of the issue and provided with as much information as possible. If there is any suspicion of cannabis use, the employee should be approached in a personal interview. However, proof of consumption is also problematic if the employee denies it. In principle, drug tests (urine and blood) and medical fitness examinations are possible, but the employee can only be obliged to undergo these in very exceptional cases due to their relevance to fundamental rights.

IV. Additional recommended Measures

In principle, all employees should be trained and sensitized to the topic of cannabis use and its effects, for example as part of a company health management system. This serves occupational

health and safety, the effectiveness of measures under labor law and accident insurance cover. Records should also be kept on this.

An existing risk assessment in the company should be updated with regard to cannabis.

V. Conclusion

The legalization of cannabis has brought considerable uncertainty and new regulatory requirements for employers in many areas.

Our employment law team will be happy to advise you on this topic and is available to answer any questions you may have.

Your employment law team



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