

## ***Recent Developments in HR Law for Minnesota Employers***

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Minnesota law is changing in important respects for employers that employ individuals who work in Minnesota. This article will highlight key changes that Minnesota employers should be aware of including: (1) changes to state law on cannabis consumption; (2) changes to the state's paid sick time law; and (3) changes to state law on non-compete agreements.

### **1. LEGALIZATION OF CANNABIS**

Minnesota has legalized cannabis use and possession at the state level in a manner that will have significant impact on employers effective August 1, 2023. First, the law clarifies that cannabis is a lawful consumable product in Minnesota (for individuals 21 and older). Therefore, employers cannot take adverse action based solely on an employee's decision to consume cannabis outside of work premises and working hours, unless they show up at work impaired (similar to how alcohol use is treated under Wisconsin and Minnesota law).

Second, the law significantly modifies the state's employment law regarding drug testing. Unless employees need to use a commercial driver's license for their job or the employer can classify employees as being in safety-sensitive positions (meaning any job in which cannabis usage would threaten the health or safety of any person), employers are prohibited from testing employees (and applicants) solely for the purpose of determining if they have cannabis in their system. This means that pre-employment testing for cannabis is now largely prohibited in Minnesota.

However, an employer can still test employees for cannabis, consistent with Minnesota drug testing rules, if an employer has reasonable suspicion that an employee is under the influence of cannabis, violated rules about use, possession, sale or transfer of cannabis, sustained an injury or caused another employee to sustain an injury, or has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident. However, an employee that fails such a drug test has to be provided with the opportunity to go into a treatment or rehabilitation program. If the employee refuses treatment or if the employee fails a second test after returning from treatment, then the employer can take adverse action against the employee.

Employers can still discipline, discharge, or take other adverse action against an employee for cannabis use, impairment, sale, or transfer while the employee is working, while on the employer's premises, or while operating the employers vehicles, machinery, or equipment if they have written workplace policies against this conduct. Additionally, employers can also impose discipline if, as a result of consuming cannabis, the employee "does not possess the clearness of intellect and control of self that the employee otherwise would have."

## 2. PAID SICK LEAVE

Minnesota's current sick and safe leave law remains in effect until December 31, 2023, but it will be replaced by a new law on January 1, 2024. Paid leave under the new law can be used by eligible employees for certain reasons, including for an employee's own illness, to care for an ill family member (who qualifies under the statute), or if an employee or their family member is seeking assistance for domestic abuse.

The new law applies to employers based in Minnesota as well as out-of-state employers that employ individuals in Minnesota who meet the law's requirements. The law **does not** apply to independent contractors. An employee is eligible for sick and safe time if they perform at least 80 hours of work in a year within Minnesota. Therefore, many temporary and part-time employees are eligible for sick and safe time provided they work at least 80 hours in a year.

Under the new law, an employee earns one hour of sick and safe time for every 30 hours worked and can earn a maximum of 48 hours each year unless the employer provides a higher amount. If an employer employs individuals in a municipality that has separate paid sick leave ordinances such as Minneapolis or St. Paul, an employer must follow the law which provides **greater** protection to covered employees.

This law also contains mandatory notice requirements. Employers **must** provide employees with a notice by January 1, 2024, or at the start of the employee's employment (whichever is later) **and** include the notice in the employer's handbook. This notice must be provided to the employee in English **as well as** in the employee's primary language if it is not English. The Minnesota Department of Labor and Industry is preparing a uniform notice which satisfies this notice requirement and will be available in the five most commonly spoken languages in Minnesota. In the event an employee does not speak any of those five languages, an employer must have the notice translated into the employee's primary spoken language.

Employers must also state the total number of earned sick and safe time hours accrued and available for the employee to use in addition to the total number of earned sick and safe time hours the employee has used on earnings statements which are provided to employees at the end of each pay period.

The State of Minnesota is still working on releasing additional guidance to address further questions.

### 3. NON-COMPETE AGREEMENTS

On May 16, 2023, Minnesota passed a law that bans nearly all non-compete agreements in the state and that will apply to agreements entered into **on or after July 1, 2023**. This ban **does not** affect non-compete agreements which were entered into **before** July 1, 2023. Unlike laws passed in certain other states, Minnesota's law applies to individuals **regardless** of income level.

This new law applies to employees as well as independent contractors. It prohibits all agreements that "restrict the employee, after termination of the employment, from performing (1) work for another employer for a specified period of time; (2) work in a specified geographical area; or (3) work for another employer in a capacity that is similar to the employee's work for the employer that is a party to the agreement." Although this language uses the words "employee" and "employer," as noted above, **it does apply to independent contractors as well**.

This law carves out narrow exceptions agreements that are "agreed upon during the sale of a business" or "agreed upon in anticipation of the dissolution of a business." The law also specifically states that unenforceable non-compete agreements are severable from an otherwise valid employment agreement. Thus, severability clauses in contracts remain an important tool. Importantly, the law **does not** apply to customer and employee non-solicitation provisions, non-disclosure agreements, or any "agreement designed to protect trade secrets or confidential information."

This new law also prohibits including choice-of-law or choice-of-venue provisions that require application of another state's law to circumvent Minnesota's ban. The law also prohibits Minnesota parties from agreeing to litigate a dispute over the non-compete agreement outside of Minnesota. Under the new law, courts may also award attorney fees to employees who enforce rights under the law.

## ***Conclusion***

Organizations doing business in the state of Minnesota or with employees working in Minnesota should be aware of these significant legal developments. At a minimum, employers should review applicable policies and handbook provisions to ensure compliance with these laws. Employers with questions about these developments should contact the authors of this article or any member of the Boardman Clark Labor and Employment Practice Group.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.

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