

## 5 Tips For Conn. Employers Navigating Pot's New Legality

By **Sameer Rao**

Law360 (July 22, 2021, 4:42 PM EDT) -- Connecticut's recent legalization of adult recreational cannabis use raises numerous legal questions for employers in the state, who are now navigating the discrepancy between state and federal law. Murtha Cullina LLP partner Salvatore G. Gangemi on Thursday explored many of these during a webinar for nonprofit organizations.



Salvatore G. Gangemi

The session, organized by the Alliance for Nonprofit Growth and Opportunity, broke down the implications of this new state law for employers that may now have to deal with employee discipline, drug testing, federal contract stipulations and more concerns.

Gangemi, a member of Murtha Cullina's employment and labor practice group, noted that the new law ultimately gives employers tremendous discretionary enforcement power over their employees.

"Despite its groundbreaking nature, the law really puts a lot of limits on recreational cannabis and really allows employers to call the shots on whether or not they're going to permit cannabis use," Gangemi said.

Here are some points that Gangemi suggested Connecticut employers must consider.

### **Many employers are exempt from this law.**

Connecticut's law, which became effective July 1, exempts employers in certain industries from following it to the letter. These sectors include mining, utilities, construction, manufacturing, transportation and delivery, education, health care, social services, public safety and national security.

"If the employer is exempt, then every employee working for that employer is exempt from the law, meaning that they don't really get to enjoy, for lack of a better term, some of the law's protection," he added.

### **Exempt employers can discipline employees or refuse to hire candidates who test positive for marijuana, even without a policy in place.**

The law gives exempt companies and organizations broad latitude to punish workers for using cannabis on the job and not hire potential employees who test positive for cannabis. These employers need not have a no-cannabis policy on the books.

### **Nonexempt employers may also discipline employees for cannabis use on or off the job, but they must have a policy in place.**

"To the extent that you are a nonexempt employer, if you want to impose restrictions on your employees, you're going to need to have a workplace policy that really spells this out," Gangemi said.

### **The law specifies what constitutes "reasonable suspicion" for nonexempt employers to take disciplinary action.**

The criteria for "reasonable suspicion" of cannabis usage, particularly for nonexempt employers who may fire or otherwise admonish an employee, include slurred speech, impaired ability, "irrational behavior," careless machinery operation and disregard for colleagues' safety, according to Gangemi.

Gangemi admitted that a lot of these grounds were "pretty subjective" and up to the employer's discretion to enforce.

### **Workers at nonexempt employers can contest disciplinary action, but only under certain conditions.**

Gangemi noted that in most situations, the new law allows employees to bring civil action in Superior Court against nonexempt employers that they believe violated the law by disciplining or terminating them. But they can only do so within 90 days of the alleged infraction, he said.

"It's clear that the Legislature's purpose, in shortening the statute of limitations, is to make sure that there's not a totally complete influx of cases," he said. "You snooze, you lose, essentially."

--Editing by Alanna Weissman.