



2022 TO DATE: A MID-YEAR REVIEW

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With 2022 halfway over it's time to take a look back on what's already happened this year, what we can expect to happen in the second half of the year and major industry changes on the horizon.

So far in 2022

The largest industry change to have already occurred in 2022 is the passage of medical cannabis in Mississippi. But wait—didn't that already happen in 2020? Yes...and no. Mississippi voters approved a ballot initiative in November 2020 that legalized medical cannabis. However, in spring 2021 the state Supreme Court ruled the ballot initiative unconstitutional, effectively nullifying the program before it ever got on its feet. In February 2022 the state legislature passed the Mississippi Medical Cannabis Act (the Act), immediately re-legalizing medical cannabis for Mississippi residents.

The Act generally favors Mississippi employers, allowing them to take adverse employment action against individuals because of their use of medical cannabis regardless of the level of impairment. Additionally, employers can establish and enforce drug testing policies and can discipline employees for either ingesting medical cannabis in the workplace or for working while under the influence of medical cannabis.

Mississippi employers are not required to permit or accommodate the use of medical cannabis in the workplace, nor are they required to modify the job or working conditions of an employee that uses or seeks to use medical cannabis. Additionally, employers are not required to reimburse or pay for costs associated with the use of medical cannabis. Mississippi employers should carefully review the law in its entirety to ensure compliance.

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Legislative trends in 2022

As in recent years, many states are pushing to pass legislation that would provide additional protections for medical and/or recreational cannabis users in the workplace. The majority of these bills include some sort of language that prohibits employers from discriminating based on a THC-positive drug test; however, not all the proposed bills include such language, providing protection in other ways. Colorado, Florida, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Virginia, Washington and Wisconsin all have progressing bills that provide cannabis-using employees protection in the workplace.

The District of Columbia, Massachusetts and New York have progressing bills that would prohibit or severely limit testing applicants or employees for THC under certain circumstances.

Additionally in 2022, more states are looking at legalizing recreational or medical cannabis, following the trends of many states in recent years. Delaware, Florida, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, West Virginia and Wisconsin have bills that would legalize recreational cannabis. Georgia, Indiana, Iowa, Kansas, Kentucky, Nebraska, North Carolina, South Carolina, Tennessee and Wisconsin have bills that would legalize medical cannabis.

DOT NRPM

In February 2022 the Department of Transportation (DOT) announced a Notice of Proposed Rulemaking (NPRM) to change current drug testing regulations and add oral fluid as a permitted specimen for DOT drug testing. The NPRM included a commenting period during which interested parties could leave comments, questions and concerns. As of this article's publication, oral fluid testing is still currently prohibited in DOT-regulated situations. Following a comprehensive review of submitted comments, DOT will issue final guidelines, which will include an implementation period, after which oral fluid will officially be permitted in DOT situations.



The bulk of the NPRM included questions from DOT for industry professionals to weigh in on. DOT asked questions on the following topics: oral fluid collection procedures, cost savings associated with oral fluid use, drug detection windows, laboratory procedures, Medical Review Officer (MRO) procedures, oral fluid in general, DOT guidelines regulatory organizational scheme, Substance Abuse Professional (SAP) procedures, specimen costs, testing circumstances and urine testing.

It is anticipated that the Final Rulemaking will be issued in the near future, paving the way to permitting oral fluid for DOT situations, Substance Abuse and Mental Health Services Administration (SAMHSA) situations and in the majority of states.

What's next?

It's likely that we will see at least one more state legalize recreational and/or medical cannabis this year, and potentially some movement around delta-8 THC. Additionally, we may see more states and/or municipalities move toward full decriminalization of psychedelics. One thing is for certain – the landscape at the end of 2022 is very different from the landscape of five years ago. Employers should regularly check state and local municipal regulations to ensure compliance in today's rapidly changing landscape.