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Client Alert: Proposed Legislation Examines Employee Marijuana Use

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Massachusetts is now a few weeks into the start of a new two-year Legislative session. The last Legislative session brought the legalization of recreational marijuana after voters approved [The Regulation and Taxation of Marijuana Act, St. 2016, c. 334](#) (“the Act”). Several bills have already been filed for consideration, and at least one suggests a continued focus on marijuana which may have a direct impact upon employers and how they treat their workforce.

On January 11, 2019, Senator Dean Tran filed a bill entitled “[An Act relative to employment protections for medical marijuana patients](#)” (the “Senator Tran Bill”). The Senator Tran Bill, if passed, would amend Mass. Gen Laws c. 94G, § 2 (“Section Two”), which places legal limits on the use of recreational marijuana, to expressly state that Section Two shall not be interpreted to allow an employer to discharge, discipline or discriminate against an employee or candidate for hire due to his or her use of medical marijuana outside of the workplace.

The Tran Bill should not be unfamiliar territory for employers. In 2017, the SJC ruled in [Barbuto v. Advantage Sales and Marketing, LLC](#) that employers cannot terminate qualified handicapped employees for the use of legally prescribed medical marijuana on their non-work time unless the employer can show that permitting the use of marijuana would place an “undue hardship” on the business.

However, it has been [reported](#) that Senator Jason Lewis intends to introduce a bill that would go further than the Barbuto decision and the Tran Bill. If introduced and passed, the bill would prohibit employers from terminating individuals for recreational marijuana use. While Senator Lewis’ bill has not yet been filed for consideration, the increased emphasis in the legislature on workplace drug policies suggests that employers should review their policies and practices to ensure that they are compliant with state and federal anti-discrimination laws. Employers should also follow the pending legislation to ensure that their policies are compliant with any future developments in this area.