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## **Dazed and Confused: Making Sense of The Status of Legalized Marijuana**

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Federal legislation and executive action, and Ohio's recent legislative revisions to legalized recreational marijuana forecast continued changes. It appears employers will be waiting a bit longer for these hazy legal clouds to clear.

### **The Hemp Loophole and Intoxicating Hemp Products**

In the 2018 Farm Bill, Congress legalized low THC (tetrahydrocannabinol) delta-9 cannabis. THC is the compound that produces the "high" associated with marijuana. Delta-9 is considered the most potent form of THC but other forms (delta-8 THC and delta-10 THC) are also "intoxicating." After the 2018 Farm Bill revisions, cannabis with a delta-9 THC concentration of .3% or less was considered "industrial hemp" and legal. Other forms of THC (including "delta-8" and "delta-10 THC) were excluded (along with low delta-9 THC) from the definition of an illegal controlled substance. This so-called "hemp loophole" allowed the production and sale of numerous THC-containing products, such as gummies, tinctures, and beverages, that were not subject to federal and state laws and regulations addressing cannabis. In the November, 2025 federal appropriations legislation, Congress largely removed this "industrial hemp" protection for the various delta-8 THC and delta-10 THC containing products, closing much of the hemp loophole. The new definition goes into effect on November 12, 2026.

### **Ohio Senate Bill 56**

The Ohio legislature passed Senate Bill 56 which similarly addressed intoxicating hemp products and other aspects of Ohio's legalized marijuana law. Gov. DeWine signed the law on December 19, 2025, but vetoed a provision providing a transition period until December 31, 2026 before the law would apply to THC-containing beverages. Senate Bill 56, with a current effective date of March 20, 2026, essentially treats intoxicating hemp products in the same manner as other marijuana products, meaning they are subject to appropriate restrictions and regulations (including age limits, testing requirements, and packaging and advertising restrictions). Additionally, the products will only be available for purchase at licensed dispensaries. Creating even more uncertainty, Ohioans for Cannabis Choice is challenging the new law and collecting signatures to overturn the legislation. The group needs to submit over 248,000 signatures by March 20, 2026 to prevent the law from going into effect and place the issue on the November 3, 2026 ballot.

Senate Bill 56 also:

- Prohibits smoking marijuana in most public places;
- Prohibits possession of marijuana outside of the original packaging;
- Prohibits transporting marijuana purchased in other states across state lines; and
- Reduces the cap for THC content of extracts from 90% to 70%.

### **Rescheduling Creates Additional Confusion**

Consistent with the previous administration's position, President Trump has encouraged rescheduling marijuana from a Schedule I drug (considered to have a high potential for abuse and no currently accepted medical use) to a Schedule III drug (considered to have a low potential for abuse with accepted medical use). The rescheduling would encourage additional studies and permit tax deductions previously unavailable to businesses engaged in the manufacture and processing of Schedule I drugs. While the President's Executive Order directed the Department of Justice to expedite rescheduling, a rulemaking process still needs to be completed, and no definitive timetable has been announced.

### **What Does This Mean For Employers?**

Given the constantly changing legal landscape addressing legalized marijuana, employers need to closely monitor legislative and regulatory activity on the federal and state level. Ohio employers should review current policies and drug testing procedures and determine whether to specifically prohibit all forms of intoxicating THC-containing products. Education and training for supervisors in recognizing other THC-containing products and how to address the effect of these products under the employer's drug free workplace policy and drug testing procedures will be critical for effective enforcement of those policies.

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