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3 Ways Attys Are Preparing For Illinois Cannabis Sales

By **Celeste Bott**

Law360 (December 20, 2019, 1:38 PM EST) -- The doors will open for recreational cannabis sales in Illinois on Jan. 1 and burgeoning cannabis legal practices are fielding a steady flow of requests for help landing a coveted cannabis license, adjusting employment policies for the now-legal substance and navigating new taxes.

Attorneys practicing in the cannabis space predict there will be a "robust market" for the product, with a high demand likely to yield additional rounds of state licensing in the coming year.

"From an attorney's perspective, there's a lot of work to go around," said Benesch Friedlander Coplan & Aronoff LLP partner Bryna Dahlin, who advises cannabis companies. "It's at an all-time high right now."

With the legalization of cannabis for adult use, an "entire new avenue of workflow has opened up," Dahlin said, noting she was still getting requests for legal advice on licensing applications as late as two weeks before the pending deadline.

In June, Illinois became the first state in the nation to use the legislative process rather than a statewide vote to legalize and tax cannabis for recreational use. In the new year, Illinois adults 21 and over will be able to buy marijuana and possess up to 30 grams.

Some attorneys predict the launch of recreational cannabis may move more quickly and more smoothly than in other states that have legalized the drug, because there's already infrastructure in place from Illinois' medical cannabis program, and the 600-plus pages that make up the Illinois Cannabis Regulation and Tax Act offers plenty of guidance to navigate the process.

Here are three ways cannabis lawyers are preparing for the launch.

Guiding Employers in Revised Training, Drug Policies

Illinois cannabis attorneys are encouraging companies to take a look at their policies now rather than later and to make it clear to employees what will and won't be tolerated.

"We can anticipate that plenty more employees will be consuming cannabis in their off hours, in the privacy of their own homes," Dahlin said.

Employers may want to consider whether to include cannabis in their drug testing at all, Dahlin said.

Attorneys have been wrestling over whether the Illinois law left leeway for employers to maintain "reasonable" policies prohibiting drug use, but a last-minute change to the law is helping employers who want to limit cannabis use breathe easier.

The legislation as passed allows employers to maintain "reasonable" zero-tolerance policies and drug testing policies as long as they're applied in a consistent and nondiscriminatory way. But a conflicting section of the state's law bans employers from taking any adverse actions against people based on their lawful use of products, including marijuana, on their own time.

In December, Illinois Gov. J.B. Pritzker signed an amendment to the law that states there is no cause

of action against an employer for “actions taken pursuant to an employer’s reasonable workplace drug policy, including but not limited to subjecting an employee or applicant to reasonable drug and alcohol testing, reasonable and nondiscriminatory random drug testing, and discipline, termination of employment, or withdrawal of a job offer due to a failure of a drug test.”

David Morrison, a principal at Goldberg Kohn, said the amendment attempted to answer an open question for employers worried about liability for drug testing.

Employers can also implement training on how to recognize employees who are impaired, and guide adverse actions not based on testing but on impaired behavior, such as bloodshot eyes, slurred words and missed meetings, he said.

“That’s still completely permissible,” Morrison said. “A zero tolerance policy is maybe the most straightforward way of addressing it. But I think that’s the other way around it.”

Positioning Clients to Land Cannabis Sales Licenses

Operators of the state’s medical marijuana facilities have the first shot at selling recreational marijuana. But there’s still plenty of work to be done — retail applications for those seeking to open new locations are due Jan. 2, the day after sales begin, said SmithAmundsen partner Darren Grady.

“There’s definitely a wide variety of anticipated applicants from larger multistate operators to small business owners looking to start a new venture to get into an exciting and emerging market,” Grady said.

The state will be on a tight timeline to issue new licenses by a planned deadline of May 1. And dispensaries are just one component — much of the first quarter of next year will be spent preparing applications for infusers, craft growers, cultivators and transporters, Grady said.

And legal expertise will be needed as those operating in the medical cannabis space will now have to make sure their business adheres to both the law governing the medical program and the law governing recreational sales, he said.

“They will now have to reckon their business with a different law,” Grady said. “Compliance is key. Because the state is looking for businesses that can operate in the confines of state law and be compliant with both.”

Growing Dedicated Cannabis Practices at Their Firms

The cannabis sector is a complex and nuanced area of the law, said Eric Berlin, who leads the cannabis team at Dentons from the firm’s Chicago office. He said it’s important for Illinois law firms to take the appropriate steps to educate their lawyers as they seek to grow and expand cannabis practices.

“When we service our cannabis clients, we’re using folks from multiple practices,” Berlin said. “It’s an area folks shouldn’t fool themselves into thinking they can come in and dabble.”

Katie Ashton, a partner who co-chairs Dentons’ cannabis team, agreed.

Legal work will grow beyond applications and initial dealings with the state, she said. Lawyers will be sought to guide the formation of new cannabis businesses and to help those companies operate in a legal way.

Every state's rollout is unique, Berlin said, but while Illinois is likely to see issues in keeping a supply of recreational cannabis to meet demand, the shift to legalization may come more easily compared to other states, given its existing medical cannabis program.

"You have state departments already used to dealing with this," Ashton said. "I think Illinois will have some headwinds, but I do think we'll get there."

Some short-term headaches are more likely to come from local governments and municipalities

grappling with the change, Ashton and Berlin said, pointing to a recent, unsuccessful effort by black Chicago aldermen to delay recreational cannabis sales in the city for six months in a push for more diverse dispensary ownership.

That's just one example of how fast-moving this area of law is, and how attorneys should be prepared to deal with "a lot of moving parts," Berlin said.

"That's the life of the cannabis lawyer," he said.

--Editing by Rebecca Flanagan and Alyssa Miller.