MARYLAND MULTI-HOUSING ASSOCIATION, INC.

House Bill 525

Committee: Economic Matters
Bill: House Bill 525 Employment Discrimination - Use of Cannabis Products
Date: February 21, 2024
Position: Unfavorable

The Maryland Multi-Housing Association (MMHA) is a professional trade association established in 1996, whose members house more than 538,000 residents of the State of Maryland. MMHA's membership consists of owners and managers of more than 210,000 rental housing homes in over 958 apartment communities and more than 250 associate member companies who supply goods and services to the multi-housing industry.

House Bill 525 ("HB 525") prohibits an employer from discriminating against an individual's use of cannabis products under certain circumstances. HB 525 establishes that an employer may not take an adverse employment action against an individual because of the individual's use of cannabis products that is lawful in the state (not impairing the individual at work etc.), an individual's positive drug test for cannabinoids (unless the employer has established by a preponderance of the evidence that cannabis use has been unlawfully impairing the individual at work), or for an individual's prior arrest or conviction for a nonviolent cannabis offense that does not involve distribution to a minor.

MMHA would like to respectfully request an unfavorable report to HB 525. As an "at-will" state, unless a contract says otherwise, Maryland employees work "at the will" of their employers and thus wide discretion is allowed in the hiring/firing of employees. Employees benefit from this relationship as well, as they are not required to provide notice to their employer should they choose to leave their employer and seek other job opportunities. The "at-will" standard is clear cut and establishes the ground rules of employment in Maryland. The discretion allowed under the "at-will" laws in Maryland are not indefinite; per the Maryland Department of Labor, "*certain exceptions to this general rule which provide some protection to employees from illegal discrimination based on such categories as race, color, gender, national origin, religion, age, disability or marital status… other employment at-will exceptions include laws which protect employees from termination or retaliation for filing workers' compensation claims, for attempting to enforce rights to receive overtime or the minimum wage, for asserting rights to work in a safe and healthy workplace, for refusing to commit criminal acts, for reporting for jury duty or military service, or for being subject to a wage attachment for any one indebtedness.".*

HB 525 sets out to create a newly protected class under Maryland law – one that is **unprecedent** amongst any other exception to the "at-will" standard in the state. No other exception as outlined before deals with establishing a protected class in employment law for a legally controlled substance; there are no such employment protections for those who choose to legally enjoy alcohol or tobacco. There is simply no justification for creating a protected class for an individual's right to consuming cannabis, equating its significance to the protections established to protect employees against discrimination of immutable traits such as race, color gender, etc.

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The repercussion from this bill could be dire and leave MMHA members in danger of falling into legal quagmires that, what have been up to this point, standardized employment practices in the state. As an example, should an employee receive an adverse employment action for failing to disclose a possession with intent to distribute felony conviction their job application, would the employer now be in violation of the law under HB 525? In any other scenario where an employee intentionally misled an employer on a job application on a felony conviction, it would be viewed as a reasonable response to take an adverse employment action against that said individual. Under this bill, it would appear the employer would be at fault. Another scenario: should an employer cite personal cannabis usage as one of a laundry list of reasons for the termination of an employee, could the employer be held liable under this bill?

In addition, there are significant concerns with a key provision of the bill, listed on page 7 lines 20-23:

> "UNLESS THE EMPLOYER HAS ESTABILISHED BY PREPONDERANCE OF THE EVIDENCE THAT AN UNLAWFUL USE OF CANNABIS HAS IMPAIRED AN INDIVIDUAL'S ABILITY TO PERFORM THE INDIVIDUAL'S JOB RESPONSBILITIES".

How is an employer reasonably expected to interpret this standard? When exactly would the suspicions of unlawful cannabis usage cross the legal threshold into meeting the "PREPONDERANCE OF THE EVIDENCE" standard as defined? This standard leaves any employer taking an adverse employment action against an employee for perceived unlawful use of cannabis open for liability. Additionally, what "property manager A" perceives as "PREPONDERANCE OF THE EVIDENCE" vs. "property manager B" could be two very different views of interpretation (let alone between companies) and thus lead to inequitable outcomes of employment actions taken against employees. To put it bluntly: this threshold is subjective, not self-evident, and would lead to inequitable outcomes for both employers who could be held liable and employees who are judged differently in each circumstance based on views of interpretation.

Between the clear departure from the "at-will" employment standard to the wide-ranging consequences that could result in inequitable application of the law for both our members and their employees, **we respectfully request an unfavorable report on HB 525**.

Please contact Matt Pipkin at (443) 995-4342 or mpipkin@mmhaonline.org with any questions.