

CLIENT NEWS BRIEF

Proposition 64: Legal and Practical Considerations

On November 8, 2016, California voters passed the "Control, Regulation and Tax Adult Use of Marijuana Act" ("Prop. 64"), legalizing recreational marijuana use for those 21 years old and older. The new law, effective immediately, among many other provisions does the following related to marijuana:

- Establishes a regulatory scheme for cultivation, distribution, sale, testing and use;
- Allows for personal cultivation of up to six plants inside a private home;
- Prohibits public use;
- Prohibits all use in vehicles and maintains existing laws about driving while impaired;
- Prohibits use within 1,000 feet of a school, day care center or youth center (unless it is in a private residence within that radius and the smoke cannot be detected at the school or center);
- Allows cities and counties significant local control over regulation related to sale, manufacturing, production, cultivation and related businesses, including the authority to ban certain activities within the agency's jurisdiction;
- Allows public and private employers to prohibit use, possession, purchasing, transporting, obtaining or giving away marijuana on their premises and to establish and enforce drug- and alcohol-free workplace policies;
- Imposes penalties for public use, use in prohibited school or tobacco-free zones or for having an open container; and
- Provides for drug prevention education and community service for offenders younger than 18 years.

The Act also establishes the Bureau of Marijuana Control, a division within the Department of Consumer Affairs, which will oversee the licensing, regulation and taxation of all marijuana businesses beginning January 1, 2018. Thus, provisions related to licensing and taxation are not effective until January 1, 2018. However, the provisions allowing personal use and cultivation of marijuana inside a private residence are effective immediately.

The impact of federal law on enforcement of Prop. 64 is uncertain. Marijuana continues to be a Class 1 narcotic under the federal Controlled Substances Act, but the U.S. Department of Justice indicated in a 2013 memorandum that it would defer enforcement for marijuana violations to states that had established "strong and effective regulatory and enforcement systems." It is uncertain whether the Department of Justice's current practice will remain in effect or be altered when a new presidential administration takes office in January.

The passage of Prop. 64 raises many issues for public agencies responsible for school and child safety, public health and safety, law enforcement, and for maintaining safe and drug-free workplaces. These issues include, but are not limited to:

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Dulcinea Grantham
Partner & Co-Chair
Labor and Employment Practice Group
Walnut Creek Office
dgrantham@lozanosmith.com



Jenell Van Bindsbergen
Partner & Co-Chair
Local Government Practice Group
Fresno Office
jvanbindsbergen@lozanosmith.com



Lee Burdick
Senior Counsel
Fresno Office
lburdick@lozanosmith.com



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- Employees possessing, using or sharing marijuana in or near the workplace;
- Establishing a defensible drug-free workplace policy, including a drug-testing protocol; and
- Dealing with employees and/or students who are suspected of being under the influence.

Lozano Smith is currently working with our municipal, school district, community college and special district clients to address these and other issues related to the enactment of Prop. 64. For more information on how the new law impacts your agency, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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