

Jill O'Brien Quoted in Bloomberg Law Regarding Cannabis in the Workplace

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The legalization of recreational cannabis in Illinois could add side letters and other addenda to existing collective bargaining agreements and lead to union challenges if workers are accused of on-the-job impairment due to marijuana use, employment lawyers and labor leaders said.

Testing for Impairment

Workers who need a valid commercial driver's license—such as truck and school bus drivers—are likely covered by U.S. Department of Transportation safety regulations, which make the consumption of marijuana illegal on or off the job and preempts any state laws. Under the new Illinois law, corrections officers, law enforcement officers, and other public-sector workers are prohibited from consuming marijuana on or off the job as well.

“Public-sector employers are largely going to be unaffected, certainly with respect to public works,” said Jill O'Brien, a Laner Muchin Ltd. partner who deals with labor issues.

Applying the law could get complicated when it comes to disciplinary actions over worker impairment due to alleged marijuana use. Under the law, employers must possess a “good faith belief” employees are under the influence of cannabis because of exhibited symptoms listed in the statute, including altered speech, physical dexterity, and irrational behavior. But just how to determine cannabis impairment under an Illinois collective

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bargaining agreement is largely unknown because such agreements typically don't mention legal cannabis.

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