Chamber of Commerce HAWAII

November 18, 2024

Re: Oral & Written Testimony, HCRC Meeting on 11/19/2024

Sent via email to Constance.m.yonashiro@hawaii.gov

Thank you for another opportunity to speak on this important issue.

I appreciate the Commission taking our concerns under consideration and revising the proposed amendments to clarify that employers would not be required to make an accommodation that would conflict with the specific activities permitted under HAR §12-46-192.

However, given the proposed amendment to the definition of "Drug" under HAR §12-46-182 to specifically exclude the use of medical cannabis pursuant to HRS Chapter 329D from the definition of illegal drug use, the most recent proposed revision to HAR §12-46-187(a) does not adequately address employers' concerns regarding safety or federal compliance obligations.

Under both state and federal law, all employers are required to provide a safe work environment free from recognized hazards. While we respect the ameliorative effects of medical cannabis, marijuana use can impair cognitive and motor functions, potentially leading to accidents and injuries, including fatalities, jeopardizing the safety of all employees, customers, vendors, and the general public.

Unlike alcohol, which has well-established tests for current impairment, THC is detectable long after use without providing any indication of current impairment. This limitation in testing methods impedes employers' efforts to enforce workplace safety standards. Employers must be able to keep their workplaces free from the recognized hazard of employees who may be impaired by marijuana use.

Employers may be particularly concerned about employees potentially working under the influence of marijuana in a broad variety of common activities, including operating vehicles, using heavy, sharp, or hot equipment, working with hazardous chemicals or substances, or supervising children.

The proposed amendment to the definition of "Drug" also defeats the intent of the exceptions under 12-46-192, as the specific activities permitted repeatedly refer to "illegal use" or "illegal drugs" without addressing the conflict between state and federal views on the legality of marijuana use.

For example, HAR §12-46-192(5) allows employers to "require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of federal agencies . . . regarding . . . the use of illegal drugs." As proposed, the definition of "illegal use of drugs" would exclude use of medical cannabis. Therefore, permitting employers to comply with federal regulations *except for medical*

cannabis use does not help resolve the conflict between Hawaii's permissive use of medical cannabis under HRS Chapter 329D and the federal Uniform Controlled Substances Act, which still lists marijuana as a Schedule I drug with no accepted medical use.

Additionally, HAR §12-46-192(5) and (6) only refence *industries* and *sensitive positions* subject to federal regulations, and do not provide for employers or employees who may not meet these descriptions but are nonetheless obligated to provide a drug-free workplace as federal contractors.

In light of the aforementioned safety and federal compliance concerns, we recommend the following three changes:

1. Removing the proposed amendment excluding medical cannabis use from the definition of illegal drug use in HAR §12-46-182.
2. Removing the proposed amendment to HAR §12-46-187 that provides examples of requests for reasonable accommodations, and simply stating, "An employee does not have to specifically request a "reasonable accommodation", but must only let the employer know that some adjustment or change to the employer's work environment or the employer's policies is needed but the employee to do a job because of limitations caused by a disability."
3. Reinstate the carve-outs from the 2023 version of the proposed amendments by amending the last sentence of §12-46-187(a) to read, "Nothing in this subsection shall be construed to require the employer to make an accommodation for the possession or use of drugs prohibited under state law, or if such accommodation would cause the employer to violate federal licensing requirements or federal regulations, or to lose a federal contract or funding," rather than simply cross-referencing HAR §12-46-192.

Me ke aloha,

M. Tonga Hopoi
Vice President, Economic Development, Government & Community Relations
Chamber of Commerce Hawaii