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Jill Snitcher, Esq.
Executive Director
jill@cbalaw.org



LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

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PREPARE WORKPLACE POLICIES FOR LEGALIZED CANNABIS

On November 7, 2023, Ohio made history when a majority of voters approved Issue 2, a proposed law to control and regulate cannabis for Ohioans 21 and older. In so doing, Ohio became the 24th state to legalize cannabis for adult use without a medical card.



BY: KATHRYN BROWN

Issue 2 takes effect December 7, 2023. However, as a citizen-initiated statute, Ohio law gives state legislators the final word on the content of the law. Given many legislators' opposition to Issue 2, businesses should expect the General Assembly to take steps to scale back certain provisions in the proposed law.

For now, businesses should note the specific protections for employers in the proposed law, which are unlikely to change. Like the provisions in Section 3796.28 of Ohio's

existing medical marijuana statute, Section 3780.35 of the proposed law permits employers to:

- Prohibit employees from using, possessing or distributing cannabis;
- Refuse to hire an individual because of their use of cannabis;

- End a worker's employment because of their use of cannabis;

- Require applicants and employees to submit to drug tests; and

- Enforce a drug-free workplace policy.

At first glance, it seems Issue 2 gives employers carte blanche to take action against cannabis users without liability. The reality is grayer. Ohio businesses are

vulnerable to litigation if they fail to consider that Issue 2 does not wipe out employers' obligations under other laws.

In particular, the Ohio Civil Rights Act prohibits employers from taking adverse job actions based on someone's disability or refusing to provide reasonable accommodations that would enable a person with a disability to perform essential job duties.

To date, Ohioans with disabilities have had the opportunity to access cannabis legally only if they have one of 26 qualifying medical conditions and follow the registration, annual doctor visit and other requirements of Ohio's medical marijuana program. With Issue 2 approved, Ohioans are expected to use cannabis to treat a much broader set of medical conditions, many of which may qualify as "disabilities" under the Ohio Civil Rights Act.

If an employer learns, through a drug test or otherwise, that an applicant or employee uses cannabis, the employer ought to consider its obligations under the Ohio Civil Rights Act before making a decision.

In light of the potential legal pitfalls and questions likely to be on employees' minds, Ohio employers should start preparing now for Issue 2 to go live. Businesses may want to update their substance abuse policies, drug testing practices and training of front-line managers.

With legal sales of adult use cannabis not expected to start until the summer of 2024, businesses have time to digest the proposed law and consider what changes, if any, make sense for their Ohio workplaces. ■

Kathryn Brown is a management-side employment attorney with Duane Morris LLP

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CROWDFUNDING 101

In the ever-evolving finance and investment landscape, crowdfunding has emerged as a game-changer for entrepreneurs seeking funding for their projects and business ideas. This revolutionary funding technique, which first started in the mid-1990s and for which certain legal burdens were removed by the 2012 JOBS Act, is a way to raise capital without registering under the Federal Securities Act of 1933. Leveraging the power of the Internet and innovative regulations, crowdfunding has opened new avenues for early-stage businesses to secure the funds they need to bring their visions to life.



BY: MICHAEL SMITH

Understanding the Crowdfunding Landscape

Crowdfunding comes in different forms, each serving a unique purpose:

- GoFundMe campaigns: Primarily used for charitable giving, such as raising funds for medical emergencies or college funds.
- Non-equity business campaigns (e.g., Kickstarter, Rocket Hub): These platforms seek business support without offering equity. Contributors may receive rewards like T-shirts, pre-order privileges, or discounts, but they do not gain any ownership of the business.

- Equity campaigns under the JOBS Act program: This category allows businesses to seek small investments from a large number of investors, offering equity in return. The JOBS Act passed in 2012 and finalized in 2016, governs these equity-based crowdfunding endeavors.

Navigating the Regulatory Framework for Equity Crowdfunding

Equity crowdfunding under the JOBS Act operates under specific regulatory guidelines to protect both issuers and investors. Key aspects of this framework include:

- Investment Limits: An investor can purchase securities up to \$2,000 or 5% of their net worth (whichever is lower) if their annual income or net worth is less than \$100,000. If their income or net worth exceeds \$100,000, they can invest up to \$10,000 or 10% of their net worth.

- Disclosure Requirements: Issuers must provide essential information to the Securities and Exchange Commission (SEC) and investors, including financial terms of the offering, financial condition, use of proceeds, and details about officers, directors, and principal shareholders.

- Intermediaries: Crowdfunding transactions must go through registered brokers or funding portals. These intermediaries ensure investors receive necessary disclosures, understand the investment risks, and conduct background checks on the issuer's key personnel.

Federal Crowdfunding Trends and Insights

As the popularity of crowdfunding grows, more entrepreneurs and investors are embracing this innovative funding model. Here are some additional trends and insights shedding light on the federal crowdfunding landscape:

- Top Jurisdictions: Delaware, California, Texas, Colorado, and Ohio are the leading states where crowdfunding initiatives thrive.

- Company Size: Most crowdfunding issuers are small companies, with the median number of employees being three. Nearly 28% of issuers report having just one or no employees.

- Industry Diversity: While traditional technology sectors such as Internet and mobile applications, enterprise software, educational technology, and biotechnology dominate the crowdfunding space, a significant percentage of companies focus on consumer products. The presence of a considerable number of alcoholic beverage companies using crowdfunding highlights the attractiveness of this financing method for craft breweries and niche food and beverage businesses.

- Annual Revenue: Around two-thirds of crowdfunding companies reported no revenue in their most recent fiscal year, while approximately 15% earned yearly revenues exceeding \$500,000.

- Commissions and Target Amounts: Funding portals charge 3% to 10% commissions. The median issuer sought around \$60,000, with many aiming for less than \$100,000 to avoid additional regulatory burdens.

Post-Funding Obligations and Requirements

While crowdfunding opens new funding possibilities, it does not exempt companies from their regulatory and state law obligations. Successful companies must maintain ongoing disclosures and information for investors, hold shareholder meetings, and consider their tax status carefully. Compliance with the

Securities Act of 1934 and regular reporting may also be necessary as the business grows.

The Future of Crowdfunding

With the continuous growth of technology and the entrepreneurial spirit, crowdfunding is expected to remain a vital funding tool for businesses across various sectors. The regulatory environment will evolve further to strike the right balance between facilitating crowdfunding and safeguarding investors' interests. As crowdfunding redefines the funding landscape, it provides exciting opportunities for entrepreneurs to turn their dreams into reality and bring innovative ideas to the world.

Are you an aspiring entrepreneur looking to bring your business ideas to life? Have you considered crowdfunding as a game-changing funding option? Our experienced team can assist you in understanding the crowdfunding landscape, help you choose the right crowdfunding platform, and ensure compliance with complex regulatory requirements. Whether you're planning a GoFundMe campaign, a non-equity business project, or an equity-based endeavor under the JOBS Act program, our legal experts are here to guide you every step of the way.

About Michael A. Smith

Michael Smith is a business and securities law attorney at Carlile Patchen & Murphy LLP and concentrates on business, corporate finance, mergers and acquisitions, technology transactions, technology licensing, banking, and securities. Mike joined CPM in February 1991 and served as Chairman of CPM's Business Law Practice Group. ■

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