

Legal Connections



Whether your business has already re-opened or is planning to soon, consider consulting an attorney to ensure any new policies remain compliant: directory.cbalaw.org.

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LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

JULY 10, 2020

THE RISKS AND REWARDS OF CBD FOODS & BEVERAGES

Recent years have seen an explosion of CBD-infused products, spanning the gamut of consumer goods. Among the most popular ones hitting the shelves are foods and beverages that include everything from energy drinks and cocktails to candy, cookie dough and even breakfast cereal. What may be surprising to learn, however, is that these products remain illegal at the federal level.



WALTER (CHAD)
BLACKHAM
Mac Murray & Shuster

being regulated by the Food and Drug Administration rather than the Drug Enforcement Administration. Since then, there has been a proliferation of manufacturers scrambling to strike it big in the CBD space, as retailers stocked their shelves with CBD infused oils, lotions, tinctures and capsules. Many of these products were, and are, legal. Others, like foods and beverages, however, remain

illegal. So where exactly is the line drawn, and why?

A bit of background: The 2018 Farm Bill famously removed hemp, which includes low-THC derivatives of cannabis, such as CBD products, from the definition of "marijuana" in the Controlled Substances Act. This reclassification resulted in one of the largest changes to federal marijuana law in decades, with hemp and CBD-based products now

The continuing illegality of CBD foods and beverages can be traced to the FDA's Food, Drug, and Cosmetic Act, which granted the FDA authority to oversee the safety of food, drugs, medical devices and cosmetics. Under the FDCA, any substance added to foods or drinks, like CBD, is an "additive" subject to premarket review by the FDA

unless it is "generally recognized as safe for human consumption" – also referred to as GRAS. In order for a substance to be considered GRAS, scientific data and information about the use of the substance must be widely known, and there must be consensus among qualified experts that the substance is safe under the conditions of its intended use.

Critically, the scientific community has yet to reach consensus as to whether consumption of CBD foods and beverages are safe. In a classic Catch-22, the scientific community cannot affirm whether or not CBD is GRAS because there isn't a sufficient body of scientific evidence to determine that, and there isn't a sufficient body of scientific evidence because, until 2018, CBD was federally illegal and could not be researched without special approval. Accordingly, foods and beverages containing CBD remain federally illegal

unless preapproved by the FDA, a hurdle no manufacturer has cleared yet. Despite this, retailers continue to stock CBD foods and beverages due to the lucrative revenue they generate and despite the fact the Federal Trade Commission and FDA have sent joint warning letters to cannabis companies regarding sale of CBD infused products that violate the FDCA.

Even so, the FDA has acknowledged the growing popularity of these products and has stated its intent to create regulations governing the issue. Nonetheless, the FDA has been vague as to when these regulations can be expected. Until the final regulations come down the pipeline, retailers should beware: CBD-infused foods and beverages remain federally illegal, and their continued sales risk drawing the ire of the FTC and FDA. ■

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THERE IS LOW RISK IN WORKING WITH A LAWYER WHOSE ADMISSION IS PENDING

The pandemic forced the Ohio Supreme Court to postpone the July 2020 Bar Examination. Instead, a procedure that allows new lawyers to apply for temporary supervised practice status was created. This gave rise to a new concern in the legal community: what is the risk associated with hiring or working with attorneys whose admission is pending?



TOM ZANI
Columbus Bar Association

The good news is this practice is already embedded in the Ohio Rules of Professional Conduct, which allows third year law students working in clinical settings to seek a limited license

to practice, as well as those attorneys working in legal aid offices coming from other states.

There are a variety of safeguards in place to protect clients, courts and employers. The new rule creates a limited expansion, and defines applicants to be a 2019 or 2020 graduate from an ABA-accredited law school. An applicant must have otherwise satisfied all requirements to sit for the bar exam.

The lawyer must practice under the supervision of an active Ohio attorney in good standing, who has been licensed for a minimum of three years, must not have failed a bar exam prior to the

July 2020 exam, and must agree to be bound by the Ohio Rules of Professional Conduct. Attorneys practicing pending admission must be covered by malpractice insurance.

Though a pending attorney can draft documents and provide service to clients, supervising attorneys must appear on any pleadings. The temporary practice period expires if the attorney withdraws their application to sit for the next bar exam, or if a pending attorney does not receive a passing score.

In addition, there are strict duties placed on supervising attorneys to provide support and guidance necessary to avoid pitfalls and foster confidence that a pending attorney is treating cases with

the care and competence required by the Ohio Rules of Professional Conduct. Clients have the same rights to make complaints where necessary against not only the pending attorney, but also the supervising attorney for failing to provide proper guidance.

Potential employers create no greater risk to their law practice or business by hiring a pending attorney because there will be little discernible difference between that attorney and any newly admitted attorney in terms of their overall preparedness. In fact, pending attorneys may better deliver competent services due to the oversight an experienced legal supervisor provides. ■



📅 Wednesday, July 15, 2020 ⌚ 12:00pm–4:45pm on Zoom

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