



Peace Comes From Without: Oregon Cannabis Employers Now Required To Enter Into Labor Peace Agreements

News

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Oregon voters passed a measure this Election Day that will soon require most cannabis licensees to enter into Labor Peace Agreements (LPAs) with a “bona fide labor organization” – a labor union – to be eligible to obtain or renew their state license. This major development will likely lead to an increased level of union organizing activity in Oregon’s cannabis industry, as affected employers will need to remain neutral when a union communicates with their employees about their labor rights under Oregon law. Cannabis employers should immediately educate themselves regarding the tension between this state law and the federal National Labor Relations Act (NLRA) to determine how to respond to this new state measure.

Nuts and Bolts of New Law

Starting December 5, Measure 119 will require Oregon processors, retailers, and laboratories to submit to the Oregon Liquor and Cannabis Commission (OLCC) a signed LPA entered into with a labor union that is “actively engaged in representing or attempting to represent the applicant’s employees.” The business will also have to attest it has entered into and will abide by the terms of the LPA. Failure to provide these assurances are grounds for OLCC to deny an application. Moreover, if an LPA is terminated after a license is issued, the licensee must enter into a new LPA within 30 days or face fines and potential suspension or revocation of the license.

Producers and wholesalers (licensees under ORS 475C.065 and 475C.093, respectively) are exempt from Measure 119.

Oregon’s measure goes beyond the LPA requirements that some other states have enacted (many of which are currently being challenged, as described below). For instance, California imposed an LPA requirement on cannabis licensees, but it does not completely prohibit employers from communicating with employees about unionization like Measure 119. Indeed, Oregon’s measure goes further by allowing unions and employees to strike.

Does Oregon’s New Law Violate Federal Law?

As we have opined before, a neutrality requirement such as the one in Oregon’s measure very likely runs afoul of (and thus should be preempted) by the NLRA. Courts have routinely determined that

the NLRA preempts or takes precedence over state laws that frustrate the purposes by imposing requirements or restrictions where the NLRA does not.

After all, this federal law provides employees with the right to not engage in any union activity. The NLRA also grants employers the ability to speak freely to workers about the pros and cons of unionization efforts as long as the employer does not threaten employees for engaging in union activity, interrogate any employee about union activity, or make promises in exchange for an employee's vote against unionization or otherwise not supporting the union. (Although a new decision just issued last week by the NLRB further restricts what employers can say during unionization efforts about what a union might do to managerial relationships.)

What Should Your Business Do?

Taking all that into consideration, affected cannabis employers will have to decide how they want to respond to the new law.

- Some may choose to challenge the measure or otherwise resist entering into these LPAs in the hopes that other businesses will successfully challenge the law.
- For those that decide to execute an LPA, it will be important to understand exactly what the measure requires and carefully review the LPA before executing. In other states, we have seen unions present employers with LPAs that go well beyond what the state law requires. You'll want to make sure you do not unwittingly enter into an LPA which is more onerous than it need be.

If you are considering entering into an LPA, consult with your FP labor attorney before proceeding. Unions have vast experience negotiating LPAs in other industries, while Oregon cannabis employers are new to the process. Unions utilize template or form agreements which are very favorable to them. If you rush to accept whatever the union offers you in order to obtain that valuable license, you may find that the short-term expediency may lead to long-term challenges.

Conclusion

We will monitor the situation for developments and provide updates as warranted, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information directly to your inbox. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, any attorney in our Portland office, our Cannabis Business Industry Group, or our Labor Relations team.

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