

HOSPITALITY INFORMATION MEMO

JULY 13, 2022

OCM Cracks Down on “Gifting” and Other Unlicensed Sales of Cannabis

Many clients eager to start a recreational cannabis business have asked us when can they start selling adult-use cannabis to consumers. Although the possession and use of cannabis is now legal in New York, that does not mean retail sales of cannabis are legal too. New York’s Office of Cannabis Management (OCM) has yet to release regulations governing the application process for retail dispensary licenses. Still, many businesses across the state have taken to “gifting” cannabis. This occurs when a customer buys an unrelated product or membership and is given cannabis for free. Businesses are attempting to profit off of newly-legal recreational cannabis before its sale is officially regulated. However, on Thursday, July 8, OCM publicly posted cease-and-desist letters that were sent to 66 cannabis storefronts calling for the end of “gifting” and other similar unlicensed sales methods (the Letters).

The Letters, a sample of which can be found [here](#), specifically state that unlicensed sales of cannabis are illegal, including the practice of “gifting.” OCM warned of potential monetary and criminal penalties should unlicensed sales continue. The Letters were intended to serve as a warning, but Tremaine Wright, Chair of the Cannabis Control Board (CCB), said last month that CCB would not continue to ‘play nice’ forever.

Some storefronts have argued that “gifting” is permitted under Article 222 of the New York Penal Code, which permits the transfer of up to 3 ounces of cannabis to a person over the age of 21. However, when the transfer of cannabis only happens upon the purchase of something else, it is unlikely that state cannabis regulators will see this activity as anything other than a sale of cannabis itself.

Clients looking to start a recreational cannabis business in New York should proceed with caution—New York is still months away from its first retail sale of cannabis and such sales are prohibited unless properly licensed. Bond’s cannabis attorneys continue to closely monitor developments to the rules and regulations surrounding New York’s cannabis industry.

If you have any questions about any of the information provided above or the cannabis industry in general, please contact [Dustin M. Dorsino](#), [Jeffrey B. Scheer](#) or the Bond attorney with whom you are regularly in contact.



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