



The pot-ential impact of medical marijuana on your workplace

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With the passage of Sub. House Bill 523, medical marijuana will now be legal in Ohio, effective September 8, 2016. This law legalizes marijuana for certain medical conditions, including pain that is either chronic and severe or intractable, PTSD and traumatic brain injuries. While it will be some time before rules and regulations are established to permit the sale of medical marijuana, the law states that the only permissible forms are edibles, oils, transdermal patches, vaporization, plant material and tinctures. Smoking of marijuana is expressly prohibited.

So what does this mean for Ohio employers?

- Nothing in the law requires an employer to permit or accommodate an employee's use, possession or distribution of medical marijuana.
- Nothing in the law prohibits an employer from taking any action that it may take under current law because of a person's use, possession or distribution. Specifically, an employer may refuse to hire, discharge or take adverse employment action due to an individual's personal use of marijuana.
- Employers may continue to have, and consistently enforce, zero-tolerance policies or other drug-free workplace policies.
- The Bureau of Workers' Compensation rebuttable presumption, which allows an employer to deny a claim if the employee tested positive for marijuana, and being under the influence was the proximate cause of the accident, remains in place. The employee can rebut this presumption at hearing, and the employer must have complied with all posting requirements for the rebuttable presumption test to apply.
- Employers may take disciplinary action against medical marijuana users who test positive in the same manner as they would against others who test positive on drug tests.
- A medical marijuana user who is discharged for having tested positive:
 - Will be considered discharged "for cause" for unemployment purposes if the employer had a written policy addressing the use of drugs.
 - May *or* may not be considered to have voluntarily abandoned the position for workers' compensation purposes. This is determined on a case-by-case basis.
- The law does not permit a person to sue an employer for taking an adverse employment action related to medical marijuana.

What can Ohio employers do NOW?

Right now, Ohio employers can protect their workers and themselves by establishing a drug-free workplace policy, if they haven't done so already. If an employer already has a drug-free workplace policy in effect, now is the time to update it to make sure it covers medical marijuana as well.

Having a drug-free workplace policy in effect prior to any employment issue arising is important, because certain provisions in the law acknowledge, and uphold, an employer's right to a drug-free workplace policy and/or zero-tolerance policy regulating the use of medical marijuana. A *formal* policy is the best way to shield yourself from employment claims and to protect your employees.

Employers should also:

- Train managers on how to observe, document and react to suspected drug use or impairment.
- Understand their continuing obligations under the Americans with Disabilities Act to engage in the interactive process and reasonably accommodate any underlying conditions.
- Review and possibly update their smoking policies.
- Verify whether their Employment Practices Liability coverage contains any medical marijuana-related exclusions.

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