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Idea Lab

Medical Marijuana: The Straight Dope

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Thursday, Oct. 29
12:45–1:15 p.m.





 American Staffing Association


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DISCLAIMER



This presentation is intended for general information purposes only. It does not constitute legal advice.

Attendees should consult with knowledgeable legal counsel to determine how applicable laws apply to their own specific facts and situations.

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National Trends re Marijuana Use

- 25 states have passed medical marijuana legislation
- Only seven prohibit employers from considering its use in employment decisions

National Trends re Marijuana Use (cont.)



- Legalized in 23 states (as of July 2015)
- More and more state and local ordinances are decriminalizing possession and use.
- Remains illegal in all 50 states per federal gov't
- Not all statutes are alike

State Challenges

- Some states – including IL, MN, CO, and NV prohibit employers from regulating off duty activities....
 - How does this intersect with federal laws?



State Challenges (cont.)

- Colorado and Washington were first states to legalize marijuana for recreational use for persons over 21.
- What does this mean.....
 - Is use at work permitted?
 - Challenges of enforcing use of marijuana in the workplace.

What Does This Mean.....

- Is use at work permitted? Law is unsettled....
 - Challenges of enforcing use of marijuana in the workplace.
 - Is use at work permitted?
 - Can you terminate following a positive workplace drug test?
 - Must you accommodate the use of medical marijuana?



Federal Law

- How does state law intersect with federal laws?
- 2005 US Supreme Court held that possession of marijuana is illegal under the federal Controlled Substance Act regardless of whether state law allows the use of medical marijuana.....

Federal Law (cont.)

- Americans with Disabilities Act
 - Prohibit discrimination on the basis of disability or handicap
 - Require interactive process to determine reasonable accommodation



Federal Law

- Possession of marijuana illegal under federal law
- Not a basis for disability discrimination
 - Gonzalez v. Raich 545 U.S. 1 (2005)
- Valid basis for discharge under Title VII analysis
 - Thompson v. McHugh (D. Ariz.)



State Challenges

- Employees who have challenged policies penalizing workers with marijuana in their systems have generally lost
 - California
 - Washington
 - Oregon
 - Colorado

State Challenges (cont.)

- Roe v Teletech Customer Care Mgmt. issue addressed by the Washington State Supreme Court
- Coats v. Dish Network Colorado Court of Appeals addressed the issue
 - Since still illegal under the federal Controlled Substance Act not ADA protected

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State Attempts

- Nevada has attempted to legislate this issue by:
 - Requiring employers to make a reasonable accommodation to an employee who engages in use of marijuana if the employee holds a valid registry ID card and marijuana use does not pose a threat of harm or danger to persons or property or impose an undue hardship on the employer or prohibit the employee from fulfilling any and all of his job requirements.

STILL UNCLEAR

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Implications on Other Workplace Issues

- Unemployment benefit claims
- Workers' Compensation claims
- "Drug-Free" workplace
- Potential HIPAA violations
- Substance abuse as a disability



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What's Next

- No reviewing court has yet to decide an employment case interpreting medical marijuana laws addressing employment
- Status of Federal Law (federal controlled substance act) may continue to provide some protections regarding the accommodation.
- Consider an interactive dialog if your state provides protection. Might be another accommodation that works (use of Marinol)

What's Next

- Consider reviewing your definition of illegal drugs in your drug policy
 - To include drugs made illegal under **federal**, state, and local laws. Prescription drugs definition should be reviewed to address prescribed marijuana.
- Expect the argument from employees who test positive that they are not impaired –
 - unlike alcohol marijuana can build up in the persons fat cells and be detectible for weeks after use.
- May be a push to quantify amount in system as a method of determining under the influence...
- Be aware of local and federal laws as they change.

Questions?



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Thank you for attending this
Staffing World 2015 Idea Lab



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