



## Florida Medical Marijuana Passage Opens Doors for Firms, Raises Employment Law Questions

News

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The article, "Florida Medical Marijuana Passage Opens Doors for Firms, Raises Employment Law Questions," featured in the *Daily Business Review*, discussed how in Florida, some lawyers' phones will be ringing off the hook, in light of the legalization of medical marijuana.

One key question, said employment lawyer Charles Caulkins of Fisher Phillips in Fort Lauderdale: Will companies be required to change their zero-tolerance drug policies for workers?

"The answer is no, you're not, with some qualification," he said. "That qualification is whether Florida courts would be receptive to an argument that an employer cannot enforce a drug-free workplace policy for someone authorized to use medical marijuana."

He said the issue has gone before courts in several other states, and as far as he knows, no state has looked favorably on that argument.

Charles said employers need to steer clear of asking employees whether they have a prescription for medical marijuana.

"That could raise an ADA issue," he said. "Really, the burden will be on the employee who tests positive for marijuana to then say, 'I have a medical condition that permits me to use medical marijuana, and here's my card from the doctor that authorizes that.'"

But at the same time, employers don't want to expose themselves to liability if an employee under the influence of marijuana gets into an accident on the job, Charles said. If a court finds the company knew the employee used marijuana, it would likely have to pay damages for negligent retention.

Businesses will have to decide whether to set new job-duty-specific rules for employees who have been prescribed marijuana, he said — for instance, allowing them to keep working while using the drug as long as they don't drive.

"That's a decision they should make," Charles said. "Do we want to stick with our zero-tolerance policy for marijuana, regardless of why it's being used, or do we want to modify that policy and allow for an interactive review for an employee who is medically prescribed and using marijuana?"

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