



High Times? Medical Marijuana In The Classroom

Insights

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Medical marijuana first became legal in the U.S. more than 20 years ago when, in 1996, California passed its groundbreaking law. Since then, an increasing number of states have passed their own laws to allow the legal use of marijuana in certain situations. Currently, medical marijuana is legal in 29 states and the District of Columbia, while recreational use of marijuana is legal in eight states. These numbers are only expected to continue growing for the foreseeable future.

However, the laws vary significantly from state to state, which has caused confusion regarding what is required of individual schools, if anything, in order to comply. To further complicate matters, marijuana remains illegal under federal law where it is classified as a Schedule I drug under the Controlled Substances Act. The end result is that schools across the country often have little understanding or guidance regarding their obligations on this issue.

Start With Your State Law

The first step to understanding your school's existing legal obligations is to become familiar with the laws of the state in which you operate. Because these laws tend to be continually revisited and revised, you should keep an ear to the ground for changes. If you operate a boarding school, you should also be aware that some of your students might come from states with laws that are different than those in your jurisdiction, which might cause confusion or unfamiliarity with legal obligations.

Recognizing the unique issues that arise in the educational setting, some state legislatures have provided guidance specific to schools in their existing medical marijuana statutes. For example, Florida voters approved a constitutional medical marijuana amendment in November 2016, and the implementing law was passed in June 2017. While the statute provides for the use of medical marijuana, "medical use" is defined to exclude use in and on "the grounds of a preschool, primary school, or secondary school...or a school bus" except in certain situations to be addressed by individual school boards. Thus, based on this wording, Florida's private schools could continue to take the position that medical marijuana is not to be used on its premises or in its buses.

However, it remains less clear whether medical use of marijuana by a student prior to arriving at school would be as definitively prohibited by state law. Some states specifically provide for medical marijuana use at school. New Jersey law, for example, states that a "board of education or chief school administrator of a nonpublic school shall develop a policy authorizing parents, guardians, and primary caregivers to administer medical marijuana to a student while the student is on school grounds, aboard a school bus, or attending a school-sponsored event."

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Debate Continues In The Courts

Courts continue to grapple with thorny issues relating to employee use of medical marijuana. Historically, courts had been consistent in their determination that employers need not accommodate medical marijuana use by employees, particularly because marijuana is still illegal under federal law. However, recent court decisions out of Massachusetts, Rhode Island, and Connecticut have altered the playing field. These cases indicate a possible societal shift on the issue that could impact judicial determinations, and, as a result, employers may be required to participate in some level of interactive process with those claiming they use marijuana for medical purposes.

For example, if a teacher requests to be exempted from an existing drug-free workplace policy due to their prescription for medical marijuana, you have room to consider a more appropriate accommodation. If the position is not safety-sensitive and the prescription does not appear to impact the teacher's ability to perform their job functions, you might consider granting the requested accommodation in order to stay ahead of the law.

Policies And Best Practices

In addition to continually reviewing the laws in the state where you operate, you should also take a look at your existing policies regarding drug use, drug testing, and the ability to search for prohibited substances. You should consider having policies preventing employees and students from coming to campus with mind-altering substances in their systems. Likewise, it is important to maintain the right to search personal belongings brought onto school property, school buses, or to school events.

Drug testing can, understandably, be a touchy subject in schools. There are no federal laws prohibiting you from drug testing your students. Many schools find that maintaining the ability to use reasonable suspicion drug tests is a vital tool to combat drug use. Some schools also administer tests before students are allowed to participate in extracurricular activities. Schools with more concerning, wide-spread drug issues have also implemented regular random drug tests and dog searches. For employees, pre-hire testing and post-accident testing continues to make sense (so long as the post-accident testing policies comply with new OSHA standards).

Drug use by students or employees is always a difficult topic for schools. The continually evolving laws on medical and recreational marijuana have complicated this issue further. The best current practices for schools start with having a good understanding of the laws where you operate, strong policies for both students and employees, and an ear to the ground for new developments – which will no doubt keep coming.

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