



Employees With Medical Marijuana

Publication

4.01.10

One of the most common questions I hear from clients is: "We have an employee with a medical marijuana card; what do we do?" Employers often are unsure about their rights and responsibilities when it comes to dealing with employees who hold the legal right to smoke marijuana in the state of Oregon. Many are concerned that such employees are immune from discipline, and have the legal right to smoke pot in the workplace without consequences. Others believe firmly that they can terminate any such employee without a second thought, but want confirmation before they pull the trigger.

Employers have various options. Generally, employers that wish to take an aggressive approach can inform all of their employees that they take a "zero tolerance" approach to all illegal drugs, including medical marijuana, and discipline all employees who test positive consistently. Although there is some obvious legal risk to this approach, employers can feel somewhat confident that the tide appears to be turning in their favor, and courts in California and Washington seem to support this approach.

A moderate approach would be to treat any request for a pass because of medical marijuana use like a request for a reasonable accommodation under disability law. Although employers are obligated to accommodate employees with medical conditions, they generally have the right to choose which accommodation to apply, and employers can explore other options besides allowing marijuana use.

Employers desiring to take a very conservative approach could allow medical marijuana users to work with them unless they display obvious signs of impairment. However, these employers could run the risk of a negligence claim should that employee injure himself or others, because it is notoriously difficult to spot impaired activity, and there is danger that an accident triggered by marijuana use could lead to catastrophic damages and massive legal liability.

Employers should cross their fingers and hope that the Oregon Supreme Court provides finality to the issue in its upcoming decision. Until then, employers might feel like they are caught between a rock and a hard place in deciding how to approach the matter.

This article appeared in the April 1, 2010 issue of *Daily Journal of Commerce*.

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