

Employers Hazy Over Medical Marijuana in the Workplace

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Employers across the country are now grappling with a relatively new and often confusing workplace obligation: accommodating employees who use medical marijuana. Fourteen states now have laws permitting the medicinal use of marijuana in certain circumstances, and at least a dozen more are currently contemplating legislation that would further expand its use. If your company does not operate in a state with such a law on the books, odds are that it soon will. And there are things you need to know about this emerging area of the law.

The states that have passed medical marijuana laws (California, Washington, Oregon, Hawaii, Nevada, Michigan, Maine, New Jersey, Colorado, Alaska, Montana, Rhode Island, New Mexico and Vermont) typically permit individuals to possess limited amounts of marijuana for medical use. Most states allow certified growers to possess marijuana in prescribed quantities as well. Those holding registry cards and following state rules are generally immune from prosecution by state and local law enforcement.

Many of the state laws hold that employers do not have to accommodate the use of medical marijuana in the workplace. Generally, an employer does not have to accommodate an employee who tests positive in a workplace drug test, even if he holds a valid registry card, as the existence of marijuana in his body while at work is not protected. However, employers who want to consistently enforce their zero-tolerance drug policies but are concerned about legal liability in terminating workers with medical marijuana authorizations have some reason to be concerned, as this issue is regularly litigated in several of these states.

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