



Employers Should Look At Marijuana Bill

Publication

1.03.13

The Illinois House is considering joining the Senate in passing the Compassionate Use of Medical Cannabis Pilot Program Act. Does this mean that Cheech and Chong will descend on Illinois workplaces?

Employers can breathe a sigh of relief. Employers are afforded certain protections under the act that grants people with "debilitating" medical conditions permission to possess and consume limited amounts of medical marijuana. For example, employers maintain the right to prohibit employees from reporting to or working under the influence of marijuana and to discipline employees if they do. In addition, the act does not give a "qualifying patient" (employee) the right to smoke marijuana in the workplace.

Further, the act does not outright prohibit employee drug testing, whether for new or existing employees. So, in other words, Cheech and Chong will not be lighting up in the employee break room.

Nonetheless, if the act passes, employers may want to revisit the language of their workplace drug-testing policies and review their drug-testing procedures for any potential conflicts with the act. For example, in the event it is not already present, employers may want to include the term "federally controlled substances" and specifically identify marijuana in the list of substances that will be tested. This will serve as a reminder that the use of marijuana, even for medicinal purposes, is still against federal law and a violation of the employer's policy and could subject the employee to disciplinary action.

Another issue may arise with the concept of impairment. As noted, the act does not afford employees the right to report to work under the influence. What happens, however, when an employee reports to work, is tested and the test shows the presence of marijuana? Is the employee subject to immediate termination? Not so fast. The act grants "qualifying patients" the right to use a limited amount of marijuana and provides that they are not "under the influence" if there is an "insufficient concentration to cause impairment." Therefore, the act suggests that if the employee falls under the proscribed limit, adverse action may not be taken against the employee.

In short, the good news for employers is that their drug policies will not go up in smoke. The bad news is that the act will likely create an initial cloud of confusion for employers. Until the smoke

settles, employers should take steps to reduce their liability risks.

This article appeared in the January 3, 2013 edition of the *Chicago Daily Law Bulletin*.

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