



## If You Smoke Pot, You Can Still Get Fired

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Federal law says that pot is as dangerous as heroin, more addictive than cocaine, and has no accepted medical purpose. Yet 23 states and DC have legalized medical marijuana in some form. Alaska, Colorado, Oregon, Washington, and D.C. have also de-criminalized recreational marijuana use. For the average worker – and their employers – this federal-state law paradox can have huge impact in the workplace.

Many employers, for instance, still choose to conduct workplace drug testing in various contexts (such as making it a condition of an employment offer), and "zero tolerance" policies remain valid. Despite numerous attempts to challenge that standard, pro-marijuana laws have had little impact on an employer's ability to drug test or to terminate employees for marijuana use.

Some examples:

- In *Ross v. Ragingwire Telecommunications, Inc.*, California's highest court found that the state's medical marijuana law protects individuals only from criminal prosecution, ruling in favor of an employer who declined to hire an injured vet taking medical marijuana to treat chronic back pain after he failed his pre-employment drug test.
- Oregon's Supreme Court, in *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries* similarly found for an employer who fired a heavy-machine operator who had used medical marijuana to treat muscle spasms during the two weeks before a drug test.
- In 2011, in *Roe v. Teletech*, Washington State's highest court upheld the termination of a medical marijuana user for a non-safety-sensitive position, even when she disclosed her valid prescription before being asked to take the pre-employment drug test. The court rationalized there was no clear public policy protecting employees from termination even for lawful home use because Washington's law provided only a defense to criminal prosecution.

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