

ARIZONA'S NEW LEGISLATIVE PRESCRIPTION FOR EMPLOYER MEDICAL MARIJUANA AILMENTS

Insights
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Employers in Arizona exhaled a sigh of relief as Governor Jan Brewer signed a new law Friday, April 29, 2011. Among other things, the new law protects employers who take action against employees suspected of working while impaired by marijuana or other prohibited substances.

While the new law seeks to protect employers from all unlawful drug use in the workplace, the law was a clear, direct, response to Arizona's new Medical Marijuana Act (MMA) passed by popular initiative this past November. The MMA, adopted by a slim margin of just over 4,000 votes, included employment protections for those authorized to use medical marijuana under the new Act. It also created serious workplace safety concerns for employers.

Provisions Of The Medical Marijuana Act

The MMA expressly prohibits employers from discriminating against registered medical marijuana users and cardholders in making employment decisions. The language in the MMA is so broad that it generally prohibits employers from taking action in most cases against medical marijuana users who test positive for marijuana metabolites in routine drug screening tests, absent other evidence of on-the-job impairment.

While employers still may prohibit marijuana use and possession in the workplace and can discipline or terminate those impaired by marijuana in the workplace under the MMA, the Act has left many questions unanswered. When, for instance, could employers conclude that an individual is "impaired" and take action? And, could employers transfer medical marijuana users from safety-sensitive positions?

Clarifications Under The New Law

The new law answers many of these questions, and provides employers with several protections against claims of wrongful termination and discrimination when taking action against those using marijuana or other prohibited substances. First, the new legislation defines "impairment" broadly. This includes any indicia that drugs or alcohol "may decrease or lessen the employee's performance of the duties or tasks of the employee's job position." Symptoms affecting speech, appearance, clothing, odor, behavior, and many others, may be relied upon in concluding that an employee is impaired. Just as significant are the "safe harbors" for employment actions based on the good faith belief of prohibited drug use and possession. You may discipline an employee or take other employment actions if you have a reasonable good faith belief that the employee used or possessed drugs in the workplace or was impaired in the workplace.

Additionally, the new law permits employers to regain control over safety-sensitive positions. You may remove employees from safety-sensitive positions based on the good faith belief that the employee is using a drug, including prescribed medications like medical marijuana, if the drug could impair the employees' ability to perform their job duties.

What Should Employers Do?

These new protections are not unlimited. The law suggests that employers may only receive these protections if they adopt formal drug and alcohol policies compliant with Arizona law. Furthermore, you will still face independent obligations under the Americans with Disabilities Act and other laws, and should always evaluate employee medication issues on a case-by-case basis before taking any adverse employment actions.

To maximize your protections under this new law, our advice is that you should revisit your drug and alcohol policies, consult with legal counsel, and train supervisors to identify signs of impairment.

If you have questions about this new law or the MMA please contact your Fisher Phillips attorney or any attorney in our Phoenix office at 602-281-3400.

This Legal Alert is intended to provide an overview of an important new law. It is not intended to be, nor should it be construed as, legal advice for any particular fact situation.