

DON'T FEAR THE REEFER, OREGON EMPLOYERS: LEGALIZATION OF RECREATIONAL MARIJUANA WILL NOT IMPACT COMPANY POLICIES

Insights
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On November 4, 2014, Oregon joined Colorado and Washington when voters approved a state initiative legalizing the recreational use of marijuana (Alaska passed a similar law the same day). As of July 1, 2015, it will no longer be illegal for adults over the age of 21 in Oregon to possess one ounce of marijuana in a public place and up to eight ounces in their home. The good news for employers: the new law does not change employers' rights in any way, and your zero tolerance policies may still be enforced.

Background

Oregon's new law not only decriminalizes the recreational use and growing of marijuana, but also the sale of the drug by authorizing the state's Liquor Control Commission to establish rules for the private sale of marijuana. It will be much easier – and probably cheaper – for people to purchase marijuana legally in Oregon than in Washington, so expect the number of pot users to only increase in the coming years.

What Impact Will This Have On The Workplace?

The new law does not contain a provision that would protect employees' use of the drug at work, nor does it provide individuals comfort should they show up for work with the drug remaining in their system. Employers should feel comfortable staying with the status quo – if your policies prohibit marijuana use at work, and further prohibit employees from having the drug in their system during working hours, you can continue to enforce such policies after July 1. However, the new law could also mean that

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some employers will find themselves in a discussion with employees about the application of workplace policies. Specifically, some employees may point out that THC, the drug's active ingredient, remains in the bloodstream well after consumption; they might claim that their legal, off-duty use of the drug should not be used against them if they were to test positive while at work days or weeks later. More enterprising employees may even claim that marijuana use should no longer be a violation of company policy since it is now legal under state law (ignoring the fact that employers have the right to prohibit the use of legal items at work, such as alcohol). Nevertheless, despite these anticipated arguments, employers are in no way required to amend their workplace drug and alcohol policies to accommodate the new law.

Nor does the law change a 2010 Oregon Supreme Court decision (*Emerald Steel Fabricators, Inc. v. Bureau of Labor & Industries*) which held that employers are permitted to discipline or terminate medical marijuana users who violate workplace drug policies, and are not required to accommodate an employee's use of medical marijuana. We reported on that ruling when it was handed down in April 2011, and a Legal Alert summarizing the case may be accessed [here](#).

What Does This Mean For You?

Employers continue to have legitimate reasons for implementing and applying policies prohibiting employee use of marijuana at work, and requiring that employees not have traces of marijuana in their system while at work, even if the substance is now legal under state law. Despite this voter mandate, marijuana is still considered illegal under federal law. Employers can continue to apply their zero tolerance drug and alcohol policies, drug testing policies, and prohibitions against the possession of the drugs on company property. To avoid any confusion as to how your workplace policies apply to recreational use, we recommend that employers who want to prohibit recreational pot should amend their written personnel policies to clearly indicate that the use of marijuana – whether for recreational or medical purposes – is prohibited just as is any other controlled substance.

For advice or further information please contact any attorney in the Portland, Oregon, office of Fisher Phillips at [\(503\) 242-4262](tel:5032424262).

This Legal Alert provides an overview of a specific new Oregon state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.