

Insights, News & Events

DON'T FEAR THE REEFER, NEVADA EMPLOYERS

Legalization Of Recreational Marijuana Will Not Impact Company Policies

Insights

Nov 9, 2016

With yesterday's vote legalizing recreational marijuana in Nevada, some employers might be concerned about the impact that this new law will have on workplaces across the state. However, Nevada employers can rest comfortably: the new law will not prevent you from maintaining and applying zero-tolerance or similar drug policies in your places of employment. Even with the passage of Question 2 (garnering some 54% of the popular vote), you will be free to screen applicants, administer drug tests, and discipline employees who test positive for marijuana.

Statute Provides Employer Safety Net

For those unfamiliar with the new law, Nevada will join the ranks of several other states by permitting the growth, possession, and use of small quantities of marijuana by private citizens once the law becomes effective on January 1, 2017. It will also allow private businesses to establish retail operations for the sale of recreational marijuana to anyone over the age of 21. A full copy of the law can be [found here](#).

Employers will be pleased with the language in the law which specifically states that it does not prohibit a public or private employer from maintaining, enacting, or enforcing a workplace policy that prohibits or otherwise restricts conduct that will soon be legal. As stated succinctly [on the website maintained by the main proponents](#) of Question 2, "The initiative will NOT affect employers' current marijuana policies or their ability to establish workplace restrictions on marijuana consumption by employees."

Related People



David B. Dornak

Partner

702.862.3812

Service Focus

Counseling and Advice

In other words, you will still be able to bar applicants who test positive for any amount of marijuana, discipline or terminate employees who are found to have marijuana in their system, and prohibit employees from possessing or using marijuana at work.

Anticipated Concerns And Action Steps

Nevada employers can learn lessons from employers in the states that have passed recreational marijuana laws in the past several years (Colorado, Washington, Oregon, and Alaska). First, you should take this opportunity to ensure your drug policies are up-to-date and comprehensive. You should consider implementing and enforcing a zero-tolerance policy to offer you maximum leverage should a situation develop in your workplace. If not already included, you should add marijuana to the list of prohibited substances in your policies.

Second, you should clearly communicate to your workforce that the passage of this law does not change your zero-tolerance policies. Some employees might question your right to be able to restrict their marijuana usage now that the drug will soon be “legal” in Nevada. Feel free to point out to them that the drug remains illegal under federal law, but more importantly, that you have always had the right to prohibit legal substances from being in their system while at work. For example, remind them that your policies have always prohibited them from working while intoxicated, and that they have never been able to show up to work with alcohol in their system despite the fact that alcohol has been legal in the state since Prohibition.

Be prepared for questions from your workforce about the “unfairness” stemming from the fact that marijuana’s active ingredient – THC – stays in the bloodstream well after consumption, sometimes for weeks at a time. This is much different from alcohol, which passes through a person’s bloodstream at a much quicker rate. Thus, some may inquire whether it is proper for you to send them for testing or discipline them based on legal, off-duty usage of marijuana which may have occurred over the weekend or days before their shift.

You should feel confident, however, in applying your zero-tolerance policies to include recreational marijuana despite this claimed inequity. While it may be unfortunate that you cannot adequately test for marijuana “impairment,” that does not mean that you cannot test for and subsequently

discipline workers who simply have THC in their system while at work. You can also proactively instruct your workers not to show up to work clearly stoned or impaired.

Third, train your managers to spot the signs of marijuana impairment at work. While you are not asking them to become drug detectives, they should be able to recognize the telltale signs of marijuana impairment: bloodshot eyes, lethargic demeanor, lack of coordination, confusion and lack of focus, etc. Just as they have been trained to objectively identify the signs of alcohol impairment at work, they should do the same for marijuana usage. Make sure they are aware of their responsibility when it comes to reasonable suspicion testing procedures, whether it includes documenting their findings and directly sending the employee for testing or otherwise informing Human Resources of the situation.

Finally, this law does nothing to change the status of medical marijuana in Nevada. While there have been no reported cases in state or federal court outlining employer rights and responsibilities with respect to medical marijuana, there is nothing in the existing state law permitting employees to have the drug in their system at work or requiring employers to allow the use of medical marijuana in the workplace.

Thus, we have consistently advised employers to treat medical marijuana just as the same as any other illegal substance (given the fact that it remains prohibited under the federal Controlled Substances Act) and discipline workers accordingly. While we do not anticipate that this recreational marijuana law will broaden employee rights regarding medical marijuana, we will monitor legal developments and provide an update should those developments occur.

For more information about how this ordinance affects your workplace, contact any attorney in [our Las Vegas office](#) at 702.252.3131 or your regular Fisher Phillips attorney.

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