

“Illinois’ medical marijuana law doesn’t allow the Illinois business community to continue what it’s been doing. You’re going to have litigation, and you’re going to have accidents in workplaces.”

Peter B. Bensinger
(former head of the Drug Enforcement Administration)

What Does it Mean to You?

Illinois’ medical marijuana law will make doing business in Illinois more costly and difficult because it attempts to expand protected classes of individuals to medical marijuana card holders. This law will put employers in an untenable bind—employers who want to maintain their drug-free workplace policies and standards will become easy targets for litigators representing medical marijuana card-carriers who will push their case for discrimination. Alternatively, if employers don’t keep their workplace safe and free of drugs, they will be subject to liability suits from on-the-job accidents.

With more people using marijuana in the state, the pool of drug-free applicants will steadily decline and the safety in workplaces will be compromised. With increased numbers of medical marijuana users in the workplace, if employers are going to meet their obligations to their employees, they will have to strengthen their drug-free workplace policies, make them enforceable, and remain vigilant of new developments in the law.

Consequences of Marijuana Use

Marijuana use has the potential to create devastating social, economic, and physical consequences. Marijuana intoxication worsens neurocognitive performance—meaning that both naïve and chronic users show defects in memory, verbal fluency, attention, learning, perception of time, and sensory perception. Marijuana smoke has been shown to contain carbon monoxide, tar, and more carcinogens than tobacco smoke; in fact, marijuana cigarettes have been shown to deposit four times the amount of tar into the lungs compared to tobacco cigarettes.

Marijuana use is associated with loss of employee productivity, increased absenteeism, increased healthcare costs, and increased accidents and crashes. A study among postal workers found that employees who tested positive for marijuana on a pre-employment urine drug test had 55 percent more industrial accidents, 85 percent more injuries, and a 75 percent increase in absenteeism compared with those who tested negative for marijuana use. Marijuana use is a major occupational safety hazard, not only a simple public health problem.

Resources



Educating Voices:

www.educatingvoices.org

OSHA: www.osha.gov

NIDA: www.drugabuse.gov

FDA: www.fda.gov

Save Our Society from Drugs:

www.saveoursociety.org

ASAM: www.asam.org

“Physician’s Role in Medical Marijuana”

“State-Level Proposals to Legalize Marijuana”



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Implications of Marijuana in the Workplace



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What's an Employer to Do?

The Occupational Safety and Health Act (1970) states that:

(a) Each employer –

- (1) shall furnish to each of his employees a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;
- (2) shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

Research has shown that marijuana's negative effects on attention, memory, and learning can last for days or weeks after the acute effects of the drug wear off. Consequently, someone who smokes marijuana daily may be functioning at a reduced intellectual level most or all of the time. Several studies have linked workers' marijuana smoking with increased absences, tardiness, accidents, workers' compensation claims, and job turnover.



Every employer's duty is to protect their employees from harm. Employers, then, should be vigilant for any legal infringement on their right to have a safe, drug-free workplace. To this end, we recommend that conscientious employers adopt a **zero-tolerance policy** for workplace use of drugs of abuse and alcohol. As more and more people who use marijuana enter the workplace in places where medical marijuana and recreational use laws have been passed, employers must be wary of the immense risk such employees pose to themselves, their co-workers, and the general public.

The need for drug-testing cannot be emphasized enough, because, despite the legalization of medical and/or recreational use of marijuana, marijuana itself remains an illegal Schedule I drug under federal law. Pre-employment screening, along with random drug testing or for-cause testing, especially for safety-sensitive positions, are options employers can use to protect their employees from injury. Employers should also carefully review their drug testing policies, or have them reviewed, to make their zero-tolerance policy absolutely clear.

The Controlled Substances Act

According to the Controlled Substances Act (CSA), the Federal Government classifies substances under five schedules based on medical usefulness and potential for abuse. Marijuana is currently classified as a Schedule I substance, meaning it has:

- High potential for abuse;
- No currently accepted medical use in treatment;
- A lack of accepted safety for use under medical supervision.

For further legal insight to workplace drug policy, visit: <http://privacyblog.littler.com/tags/medical-marijuana/>.



Possible Litigation

Although several states have passed laws legalizing the medical use of marijuana, state laws do not change the fact the marijuana is still classified as a Schedule I substance—it is still illegal, dangerous, and does not have any recognized medical uses under federal law. State laws, therefore, *cannot* force employers to tolerate marijuana use, medical or otherwise, from their employees. *As long as marijuana is prohibited by federal law, employers do not have to accommodate its use, nor do they have to refrain from disciplining employees found to be using marijuana.* For example, in *Ross v. Ragingwire Telecommunications, Inc.*, the Supreme Court of California concluded that an employee was not unlawfully fired when he failed a drug test and that his employer had no call to accommodate his medical marijuana use.

Legal precedent is on employers' side—state Supreme Court cases in California, Montana, Oregon, and Washington have ruled that as long as federal law prohibits the use of marijuana for medical reasons, the states cannot actually legalize marijuana use and therefore cannot oblige employers to tolerate use.

The best advice to employers is, of course, to remain watchful and abreast of new developments in marijuana laws.