



Up in Smoke: HR Policies and Medical Marijuana

With a patchwork myriad of state law changes, how do companies ensure their drug policies do not go up in smoke?

In April 2016, Governor Tom Wolfe signed into law the Pennsylvania Medical Marijuana Act. According to the [National Conference of State Legislatures \(NCSL\)](#), 25 states, along with Puerto Rico, Guam, and the District of Columbia, now accommodate medical marijuana and cannabis programs.

Qualifying medical conditions for the use of medical marijuana vary by state but some conditions for which marijuana is recognized include:

- Hepatitis C
- Epilepsy
- Alzheimer's disease
- Amyotrophic Lateral Sclerosis (ALS)
- Chronic, painful conditions with severe symptoms, such as nausea or seizures
- Cancer
- Glaucoma
- Human Immunodeficiency Virus (HIV) / Acquired Immune Deficiency Syndrome (AIDS)
- Crohn's disease
- Parkinson's disease
- Spinal cord injury (SCI)

The lack of workplace precedence in dealing with medical marijuana leaves employers at a loss when developing policy standards around drugs/usage and drug testing.

A firm bottom line—federal law

Although laws and procedures differ by state, federal law does not. The U.S. Department of Justice (DOJ) still considers marijuana a controlled substance and “that the illegal distribution and sale of marijuana is a serious crime.”

While states move forward slowly with legalization of certain forms of marijuana, for defined uses, employers with contacts or contracts with the federal government can be comfortable maintaining zero tolerance attitudes toward medical marijuana. Agency-associated employers may not violate federal regulations that enforce a drug-free workplace or standards that require unimpaired personnel.

Where does this leave employers?

Until case law develops on a state-by-state basis, or the DOJ shifts its enforcement mandate, employers should consider options to maintain a safe workplace, accommodate workers, and avoid lawsuits brought by individuals claiming use of marijuana on the job as a *reasonable accommodation*.

Tips include:

- Review and understand state policy and precedent around the use of medical marijuana. Because the drug is used to treat certain conditions, individuals must be certified to use medical marijuana. Certification could be considered as creating a protected class of individuals who might conceivably sue an employer for discrimination due to their disability if they are terminated or reprimanded for being impaired by marijuana use on the job.
- Define your drug policy, its process, and the consequences for testing positive. The drug policy in a manufacturing plant is going to be different than an office. There are workplaces where zero tolerance is appropriate, and perhaps some where testing positive for marijuana use—when certified—does not mean the individual is impaired, just that medical marijuana is in use. This requires creating an answer to a sticky question—what does “impaired” mean to your company?
- Meet these challenges as quickly as possible, before an employee challenges you, or impairment leads to a tragic accident.

For any company, the legalization of medical marijuana, and even recreational marijuana in some states, can bring up many questions regarding employee handbook Drug policies. To ensure you are in compliance contact us at McCloskey Partners, LLC.

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