

Impact of Recreational Marijuana on Your Business

Labor & Employment Law Update

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While marijuana use remains unlawful under federal law, 30 states and Washington D.C. have legalized some form of medical use. Eight states and Washington D.C. have legalized recreational marijuana for adults. More cities, states, and counties have taken steps towards legalizing adult recreational use and increased tax revenues, or to decriminalize possession of small amounts (this might be seen as a tacit legalization without the tax benefits).

Illinois may be next to legalize adult recreational use, with a majority of those polled in the state supporting legalization, and \$350M to \$750M in annual tax revenue on the line to help plug a \$6B+ deficit. What is clear is that marijuana use may become more prevalent, and the impact on business felt more frequently.

Here is what you need to know now:

1. MEDICAL CANNABIS USERS MAY STILL BE PROTECTED!

While use of cannabis is still unlawful under federal law, the steps required to become a registered medical user in most states imply that the user has an underlying medical condition that would be considered a disability, protected under the Americans with Disabilities Act, or similar state or local law. Therefore, consideration must be given to these equal employment opportunity laws.

2. IMPAIRMENT AT WORK IS NEVER TOLERATED.

Businesses must be proactive in implementing employment policies regarding substance and alcohol use and impairment in the workplace. Consistent, nondiscriminatory enforcement of these policies will help protect businesses from equal employment opportunity/disability claims.

1. Treat cannabis like: heroin, prescription medication, or alcohol – depending on your view and consistent with state law.
 1. Heroin: Remember, cannabis is unlawful under federal law, and employers may implement drug-free policies.
 2. Prescription medication: In states where medical cannabis is lawful, and subject to the above, remember that use of cannabis by someone other

than the registered user is the same as abusing someone else's prescription. This use is not protected by any law.

3. Alcohol: Where recreational use is in play, subject to the above, many states protect lawful conduct during non-working hours (e.g., using cannabis after work); however, use and/or impairment at work need not be tolerated.

Prepare Now for Recreational Marijuana:

Given current trends, recreational use seems likely to be a question of "when." Proactive steps today will put the company in a position to make reasoned decisions, rather than reactionary moves opening the company to claims of discrimination. This includes:

- Reviewing the company's philosophy towards marijuana, prescription medications, and alcohol in the workplace. Ensuring that supervisors have appropriate training on these issues.
- Updating handbooks and manuals to reflect drug testing, workplace search, disability, and other related policies.
- Determining safety-sensitive positions, and updating written job descriptions accordingly.
- Engaging experienced employment counsel to audit policies and practices to ensure compliance and to address policy violations, investigations, and disability accommodation and related matters as they arise.

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