

Labor and Employment Update :

What Employers Must Know About Medical Marijuana and the Workplace

By John J. Balitis, Jr. and Jessica L. Catlett

Proposition 203, Arizona's medical marijuana law, becomes effective December 4, 2010. This new measure will change the way employers treat and interact with workers who qualify for protection under the statute. Employers should consider several important points in light of these significant developments.

Under the new law, employers are prohibited from discriminating against a prospective or current employee who is a card holder (a qualifying patient who has a valid identification card permitting him/her to use marijuana for medical purposes) on account of the employee's cardholder status or as a result of the employee testing positive for marijuana through a drug screen. A qualifying patient is one who has been certified by a physician as having a debilitating medical condition, such as cancer, HIV, AIDS, or amyotrophic lateral sclerosis, or certain symptoms of a chronic or debilitating disease, including seizures, muscle spasms, severe and chronic pain, or severe nausea.

Notwithstanding their status as cardholders, employees do not have the right to use or possess marijuana at work. Employers also can discipline employee-cardholders for being impaired by marijuana at work or during working hours. The distinction between impairment and presence of marijuana in an employee's system is critical for employers to understand. Under Proposition 203, employers may no longer implement or enforce drug-related policies that prohibit the presence of marijuana in an employee-cardholder's system. Instead, before taking action against an employee-cardholder, an employer must be able to show that the employee-cardholder was impaired by marijuana while at work. In addition, Proposition 203 establishes a presumption that a cardholder's use of marijuana is for medicinal purposes, which places the burden on the employer to prove that an employee-cardholder's use of marijuana is inconsistent with the law.

Employers should note that they may continue enforcing drug testing policies that prohibit non-cardholding employees from having marijuana in their systems while working. In addition, employers that would lose a Federal license by employing a marijuana user are not required to employ the user.

Employers should revisit their drug-related policies and drug testing procedures to ensure that all policies and procedures are consistent with Proposition 203. Employers also should conduct training to educate managers and supervisors on how to identify and document signs of impairment. Finally, employers should proceed with caution and consult counsel before taking any adverse action against an employee-cardholder in connection with his or her marijuana use.



Sherry Janssen Downer

Fennemore Craig, P.C.
(520) 879-6852
sdowner@fclaw.com

Ms. Downer practices in the areas of labor and employment, commercial and business litigation, and professional liability. Ms. Downer represents companies in employment litigation, commercial disputes, contract claims and the defense of tort claims. She has successfully defended and obtained dismissals for professionals, including attorneys and doctors, against professional malpractice claims.