

# Medical Marijuana and the Workplace

## A Reference Guide for Employers

### **Federal Law and Marijuana**

Under federal law marijuana is classified—and has been since 1970—as a Schedule 1 drug. Essentially this means that federally, marijuana is not recognized as having any medical value. Even though individual states have legalized medical marijuana (MM), the federal law remains intact and has not changed.

### **Pennsylvania and Act 16: Medical Marijuana**

The federal government cannot force states to criminalize conduct that is illegal under federal law, nor can the federal government force state and local police to enforce federal laws.



### **Must an employer accommodate an employee or applicant who uses medical marijuana?**

Yes. Under Act 16 employees and applicants that are also doctor recommended medical marijuana patients are protected. An employer may not fire or refuse to hire someone because they have certified medical marijuana status. In this case, medical marijuana should be treated the same as an employee or applicant having a valid prescription for any other type of mind-altering drug. Not accommodating a card carrying medical marijuana person, could ultimately cause an employer discrimination-based litigation.

### **Are there exceptions to the accommodation of employee MM patients in the workplace?**

Absolutely. If your business is subject to federal laws or regulations mandating a marijuana-free workplace, continue to abide by those requirements. PA Act 16 does not require employers to violate federal law that prohibits marijuana use by employees. For safety reasons, certain duties and positions are specifically addressed. PA Act 16 strictly states that no one under the influence of medical marijuana may engage in the following job tasks: control of chemicals, which requires a permit issued by federal/state government operation; control of high voltage electricity; any other public utility employment duties at heights or in confined spaces including mining.

### **Does the employer have to accommodate the use of medical marijuana in the workplace?**

No. PA's Act 16 also clearly states that an employer is not required to accommodate the use of medical marijuana on company property or on any premise considered part of the workplace.

### **Does the employer have to accommodate an employee who is under the influence of medical marijuana at the workplace?**

Yes and no. A employee may be prohibited by an employer from performing any task which the employer deems life threatening—to either the individual employee or any persons in the employer's workplace—while under the influence of medical marijuana. This also applies to any duty which could result in a public health or safety risk while under the influence of medical marijuana.

### **Can an employer discipline an employee for being under the influence of MM in the workplace?**

Yes, when these TWO specific circumstances occur simultaneously. Under PA Act 16, an employer can discipline a cardholding MM employee under the following conditions:

- ✦ The employee is under the influence of medical marijuana while at work.
- ✦ The employee's work performance has fallen below the acceptable standard for the assigned position.

*Please Note:* In order to discipline an employee pursuant to this provision, the employee must be both under the influence of medical marijuana while at work AND have his/her job performance fall below an acceptable level.

## Is a lab drug screen sufficient to prove an employee is under the influence of MM at work?

No. A laboratory drug test is not able to prove the time of use to show current impairment. Drug testing will show that there has been a use of marijuana over the past several days or months, depending on the type of test performed. However, for safety sensitive positions, "Under the Influence" is determined by a blood content of more than 10 nanograms of active tetrahydrocannabinol (THC) per milliliter of blood in serum.

## How can employers protect themselves?

### Review, update, or create solid job descriptions.

- ✦ Specific job descriptions are essential for safety sensitive positions. An employee's job description is imperative for outlining the official "standard of care" or expectation of performance for any specific job position.
- ✦ Out-of-date, inaccurate, or vague job descriptions will greatly impede an employer's efforts to establish that an employee's conduct fell below the expected standard of care or norm.
- ✦ Some tasks or duties considered potentially life threatening or posing a public health or safety risk might be obvious; whereas, others may not be so clear cut. Specifically identifying these tasks in a detailed and signed job description will help employers support their stance when the need arises.



## Other Employer Considerations

- ✦ Review current or create new drug and alcohol policies and/or post signs throughout your workplace stating exactly when and why a drug test will be performed, for example: for example, pre-employment, random, post accident, reasonable suspicion, return-to-duty. Be sure to include how consequences for failed tests will be enforced.
- ✦ Create a written substance abuse policy that spells out your rules and expectations.
- ✦ Clearly state that medical marijuana use while working is NOT acceptable behavior.
- ✦ Develop a process to review reasonable accommodation requests for medical marijuana cardholders.
- ✦ Update equal employment opportunity policies to include potential employees who are currently medical marijuana cardholders.
- ✦ Have a policy securely in place for handling workplace violations and keep detailed records of such violations.
- ✦ When you alter or change a policy, be sure to educate employees and use a signature acknowledgement form.
- ✦ Raise awareness toward drug and alcohol policies on an ongoing basis by including such policies in company newsletters as well as safety, team, supervisor, and staff meetings.

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