

Medical Marijuana Legalized in Illinois

November 1, 2013

Services

Drug Testing and Substance Abuse Management

On January 1, 2014, Illinois will become the 20th state in the nation to legalize marijuana for medicinal purposes. Illinois' governor signed the legislation, the Compassionate Use of Medical Cannabis Pilot Program Act ("Cannabis Act"), to create the four-year pilot program. The program allows patients diagnosed with one of 42 specific, debilitating medical conditions to use medicinal marijuana. Qualifying individuals will be issued a Registry Identification Card by the Department of Public Health. Illinois has removed state-level criminal penalties from the medical use and cultivation of cannabis. The purpose of the Act is to protect patients with certain debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties, and property forfeiture if the patients engage in the medical use of cannabis.

State medical marijuana laws do not completely legalize the manufacture, distribution and possession of marijuana, which remains illegal under federal law. Marijuana is a Schedule I drug under the federal Controlled Substances Act, meaning that under federal law, it lacks any accepted medical use and that there is no accepted safety for use in medically supervised treatment.

Medical marijuana laws require employers to balance between two competing interests: the employer's right and duty to establish and maintain a safe and productive workforce, and the employer's obligation to accommodate, when reasonable, employees with disabilities that may require or allow the use of medicinal marijuana. These laws raise questions about the implementation of drug-testing policies in the workplace, the scope of an employer's duty to accommodate its employees under state and federal laws, and compliance with federal statutes such as the Drug-Free Workplace Act.

Illinois law does not permit the use of marijuana in any place of employment. In addition, nothing in the Cannabis Act prohibits an employer from enforcing a policy concerning drug-testing, zero tolerance or a drug-free workplace, and employers may discipline employees for violating a workplace drug policy. The Cannabis Act does not permit any person to engage in any task under the influence of cannabis, when doing so would constitute negligence, professional malpractice or professional misconduct. A qualifying patient is not permitted to be impaired at work, and an employer who has a good faith belief that a qualifying patient is impaired while working, or has used or possessed cannabis at work, may take disciplinary action.

The Cannabis Act prohibits employers from penalizing an employee solely for his or her status as a registered, qualifying patient (or caregiver), unless failing to do so would put the employer in violation of federal law.

Under Illinois law, an employer may have to consider accommodating an employee whose medical condition has led to a recommendation of medical marijuana use. Since medical marijuana remains an illegal drug under federal law, its use is not protected under the Americans with Disabilities Act ("ADA").

The three departments responsible for enforcing the provisions of the Act (the Departments of Health, Agriculture, and Financial and Professional Regulation) have until April 30, 2014, to develop and publish rules in accordance with their respective responsibilities.

Illinois employers should consult with appropriate counsel as to whether they should update their employee handbook to include an explicit statement on their policy on medical marijuana and how they should handle this new law in light of drug-testing and Illinois disability accommodation issues, and review any substance abuse testing policies.

Please contact the Jackson Lewis attorney with whom you regularly work if you have any questions about the Illinois law.

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