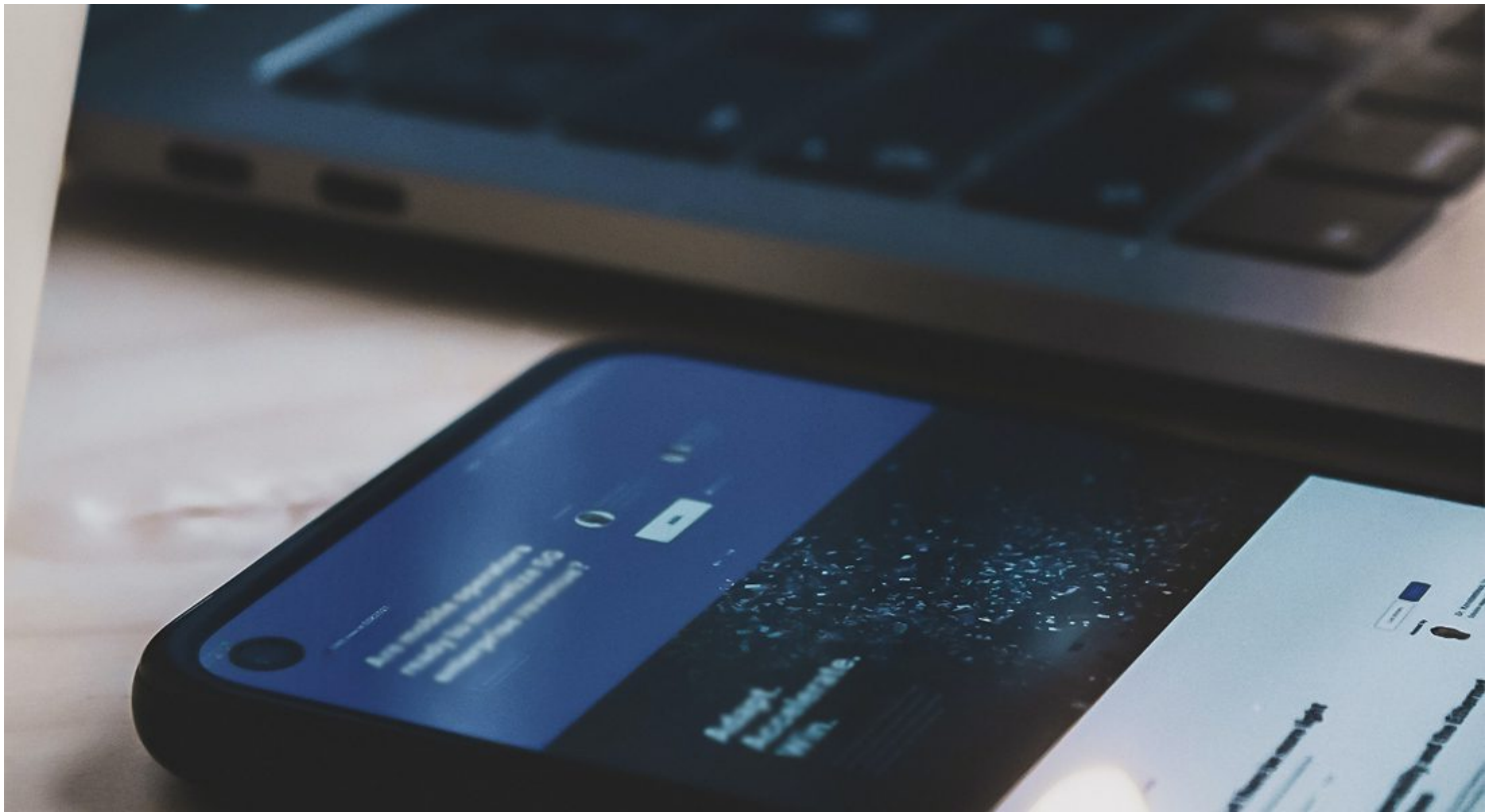


NEWS & INSIGHTS

The Current State of Medical Marijuana's Impact on Employers

BY: [KATY S. LANDIS](#) | [INSIGHTS](#) | [LEGAL UPDATE](#)

APRIL 11, 2018



On April 17, 2016, Pennsylvania became one of twenty-nine states to pass legislation legalizing medical marijuana. With the implementation of [Pennsylvania's Medical Marijuana Act](#), employers are wondering how their business model and hiring techniques mesh with this new legislation. Despite legalization, medical marijuana has the ability to impair an individual. This impairment, especially in certain jobs, could create a hazardous work environment and cause safety concerns. Can an employer refuse employment to an individual with a medical marijuana card? Can an employer terminate an employee for legal use of medical marijuana? While the answers to these questions remain unclear in Pennsylvania, other states have begun to work through these issues.

[The Americans with Disabilities Act](#) (ADA) states, “No qualified individual with a disability shall, on the basis of that disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity.” The ADA defines a “qualified individual” as a person “with a disability who, with or without reasonable modifications . . . meets the essential eligibility requirements for the receipt of services or participation in programs or activities provided by a public entity.” Under the Act, “[d]isability means, with respect to an individual: (i) A physical or mental impairment that substantially limits one or more of the major life activities of such individual; (ii) A record of such an impairment; or (3) Being regarded as having such an impairment...”

Notably, the ADA excludes any individual who is engaged in current illegal drug use from its purview. Section 35.104 defines “illegal drug use” as use of “a controlled substance, as defined in schedules I through IV of section 202 of the [Controlled Substances Act](#) (CSA).” Thus, the ingestion of any drug deemed illegal under CSA would exclude an employee from the protections of the ADA. Marijuana is a schedule I drug under the CSA.

In fact, California, Oregon, and Colorado – the forerunners in the marijuana legalization game – have declined to extend ADA protections to individuals who have valid marijuana cards. In *James v. City of Costa Mesa*, the Ninth Circuit Court of Appeals held “that doctor-recommended marijuana use permitted by state law, but prohibited by federal law, is an illegal use of drugs for purposes of the ADA, and that plaintiffs’ federally prescribed medical marijuana use therefore brings them within the ADA’s illegal drug exclusion.” Although not an employment case, the Ninth Circuit’s holding is broad and applies with equal force to all provisions of the ADA.

On the other hand, several states, such as Massachusetts, Rhode Island, and Connecticut, have enacted statutes that expand the scope of the federal ADA to require employers to accommodate employees with medical marijuana cards. In *Barbuto v. Advantage Sales & Marketing, LLC*, plaintiff was offered employment with defendant contingent upon a negative drug screen. Plaintiff advised she would test positive for marijuana, which was legally prescribed for her Crohn’s Disease. Although plaintiff advised she did not use marijuana every day and that she would not use it on the days she worked, plaintiff was terminated after one day. The Supreme Court of Massachusetts held that plaintiff did have a qualifying handicap under the state law and that defendant was therefore required to make reasonable accommodations to “enable her to perform essential functions of her job.”

[The Pennsylvania Human Relations Act](#) (PHRA), the Commonwealth’s version of the ADA, “prohibits an employer from discriminating against any employee because of a disability.” Pennsylvania courts have held that the “PHRA and the ADA deal with similar subject matter and are grounded on similar legislative goals.” Based on past Pennsylvania court decisions, it is likely that Pennsylvania would continue to interpret the PHRA as consistent with the federal ADA, which would exclude medical marijuana users from its purview.

It is crucial for employers to get ahead of this issue and begin creating and implementing policies and procedures to deal with applicants and employees who use medicinal marijuana. For questions about Pennsylvania’s Medical Marijuana Act and how it impacts your business, please contact Saxton & Stump’s [Employment Law Group](#).

Related People

Related Services and Industries

[Labor and Employment](#)