

NEWS & INSIGHTS

Medical Marijuana in the Workplace: Considerations for Employers

INSIGHTSARTICLE

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Employers and human resources (HR) professionals are tasked with navigating how to handle medical marijuana in the workplace with little guidance from Pennsylvania courts. Adding to the complexity of this issue, employers must remain cognizant of workplace safety concerns and discrimination.

While Pennsylvania's Medical Marijuana Act does protect employees who are certified to use medical marijuana from workplace discrimination solely based on their certification, employers are generally not required to accommodate the use of medical marijuana in the workplace or excuse workplace negligence or malpractice.

In order to protect your business from lawsuits and employees who use medical marijuana from discrimination and harassment, it is imperative to consider the following factors when deciding how your company will handle medical marijuana.

How should employers handle medical marijuana in the workplace?

Consider your business. If your business is regulated or funded by the federal government, you may face overarching policies that regulate the use of medical marijuana. For example, the Department of Transportation (DOT) does not recognize medical marijuana as a valid reason for positive results on a drug test.

If your employees work in different states or you employ individuals who live in a different state than your company, they may have different rights as residents of a pro-medical marijuana state.

Update handbooks. Zero-tolerance drug-free policies should be revised to address the permissible use of medical marijuana. Establishing a process for employees to advise HR of their status as a certified user of medical marijuana and creating standardized policies regarding the use of medical marijuana is crucial in preventing discrimination. Based on the industry, certain jobs or duties may need to be restricted for medical marijuana users to ensure workplace safety.

Train supervisors. Supervisors should be trained regarding how to appropriately handle an employee who uses medical marijuana. They should know the company's medical marijuana policy, be aware of situations that could be perceived as discriminating, focus on the employee's job performance and understand the importance of documenting.

Do not divulge any personal medical information to employees who do not need to know. An employee's status as a certified medical marijuana user should not be shared with other employees. Supervisors should be notified of any restrictions necessary for the employee, but they do not need to be made aware of the reason for the restriction.

Be mindful of reports of disability discrimination/harassment for marijuana. A process should be established to handle reports of harassment. It should be made clear to all employees that insensitive jokes or comments about marijuana will not be tolerated. This type of behavior could create a hostile work environment for users of medical marijuana. Reports of harassment or discrimination should be investigated in the same manner as any other form of harassment.

Develop reasonable suspicion checklists to formalize procedure. Standardization is also key in addressing when an employee's performance has fallen below the employer's expectations. These policies should apply to all employees, whether or not they utilize medical marijuana, to prevent discrimination or accommodation for unacceptable performance.

Employers should develop a reasonable suspicion checklist to document the event and behavior of an employee whose impairment is affecting their work performance. This checklist assesses an employee's appearance, behavior, motor skills and performance issues and documents the agreed upon action plan.

Contact Saxton & Stump to further discuss how to properly handle medical marijuana in the workplace and to learn

how Saxton & Stump's [Labor & Employment Law Group](#) can help guide you through this uncertain climate.

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