

## Weekly Safety Meeting

### What Medical Marijuana Means For Employers

*Working Partners agenda* is to limit a client's exposure. Of course we want to prevent the employer from doing anything illegal as it relates to substance abuse and the workplace. But limiting liability or exposure goes further than that. We are dedicated to being sure that the employer understands which of their desired protocols or drug-free workplace program operational preferences are untested by the courts.

Why? Because employer actions that are "grey" or untested can potentially end up mired in litigation, costing money and resources. Even if the employer prevails, it may not feel like a victory when the dust clears.

In November 2012, voters in several states were given the opportunity to legalize medical marijuana; two states, Washington and Colorado voted to legalize recreational marijuana. The latest round of votes brings the total count of states which allow medical marijuana to 18 plus Washington D.C. Employers have a critically urgent obligation to understand what this issue is all about and how it can impact their corporate operations. The language in most of these initiatives has been very carefully crafted to protect the interests of the person using medical marijuana, often at the expense of safety and productivity on the job.

Although the stated objective of medical marijuana bills is compassion for sufferers of debilitating medical conditions, there are certain basics to this issue that every voter should understand.

First of all, United States' procedure dictates drugs for medical use be vetted by the Food and Drug Administration (FDA), not by citizenry vote. Imagine being asked to vote on whether valium is safe and valid for use as a medicine.

Secondly, no matter what is ruled by the population or a state legislation, the federal government classifies cannabis (marijuana) as a Schedule 1 drug "with no accepted medical value in treatment." At this time, legal access is only possible through an Investigational New Drug (IND) application issued by the FDA for scientific research and trials.

That said, marijuana for any use is illegal under federal law, and even individuals in states that have enacted medical marijuana laws or passed ballot initiatives are subject to arrest by federal officials for possession of marijuana under the Controlled Substances Act.

Furthermore, the Controlled Substance Act prohibits the cultivation, distribution, importation, dispensing and sale of schedule 1 drugs. So virtually every component of the direct chain of access and supply for medical marijuana violates federal law.

Besides the standard process of confirming a drug as medicine and the conflicts with federal law, there are additional issues that employers face in states where medical marijuana legislation has been passed and/or is being considered. Again, the initiatives and bills are being written to protect the user and often jeopardize the operational realities that an employer will face.

For example, the acceptable, objective standard for measuring “impairment” or jeopardy at the hands of marijuana is a drug test on bodily specimens that measures the level of the drug’s metabolites in an individual’s system. This protocol has been refined, scientifically standardized and made defensible in the courts for over 20 years by the federal government. Since 1991, 12 million employees have been subject to this process each year.

Many of the medical marijuana laws and proposed bills restrict an employer (and even law enforcement). They require impairment to be based on standards other than metabolites, such as documentable observation or field sobriety tests. Unfortunately, these approaches do not produce objective, scientific data (such as a drug test result) that can be applied in a court of law. This leaves the employee vulnerable to subjective persecution and the employer virtually helpless to “prove” impairment.

A “typical” dose of marijuana (about 300 micrograms of THC) causes impairment roughly equivalent to a blood alcohol content (BAC) level of .08%. Unlike the *physical* signs of alcohol intoxication (e.g., slurred speech, staggering), the signs of impairment from marijuana use are more related to *mental* functioning. Even supervisors trained to observe signs of alcohol/drug use have a difficult time “seeing” decrease peripheral vision and depth perception, slowed reflexes, skewed judgment, or difficulty tracking moving objects and following directions. The signs are subtle to the eye but risky to the workplace.

The scribes and supporters of these bills have learned from previous episodes around the United States. At this stage, most bills being proposed also restrict the employer’s latitude in hiring and terminating as it relates to a “card holder’s” use of medical marijuana.

The majority of medical marijuana legislation being proposed prohibits use “on” the workplace, which is good. But as we know, the effects of smoking marijuana do not just stop when one ceases smoking. Pharmacological effects of marijuana vary with dose, quantity, quality (potency), route of administration, experience of user, vulnerability to its psychoactive ingredients and setting of use. According to the National Highway Traffic Safety Administration, the duration for marijuana effects (physiological, psychomotor and complex divided attention task effects) generally ranges from 2-24 hours.

Most bills also eliminate the need to have marijuana prescribed by a licensed physician and the application of prescription requirements. Instead, language like “written recommendation” is used to identify how an individual will gain permission to receive medical marijuana. Employers will not have the confidence that a trained physician, operating under regulations, will be prescribing this “medicine.”

Other medical marijuana-related issues that many employers find distasteful include the interplay between opening the door for medical marijuana and employer burdens such as corporate liability/health/auto/fleet insurance requirements, workers’ compensation, disability discrimination and taxation. Rest assured, these and many more issues will and are being directly and indirectly impacted where the legality of medical marijuana is determined by the people.

There is a system in place to vet and control drugs as medicine. Adjusting the system is one thing, but having the populous determine what medicine is akin to a mutiny or an end-run attempt at legalization and is foolish. Employers have a lot at risk with these laws. It is imperative that we become as knowledgeable as we can about the issues and then take a stand.