

Recreational and Medical Marijuana Laws and Workplace Policies: *Cutting Through the Haze*

HFMA Region 8 2019 Mid-America Summer Institute
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What is happening in Region 8?



Missouri

- **2018** – voters approve Amendment 2 by a wide margin, legalizing medical marijuana usage
- **BUT** – Section 7(1)(d) – prohibits individuals from bringing a claim against an employer for
 - its refusal to allow an employee to be under the influence in the workplace **or**
 - adverse action resulting from the employee working/attempting to work under the influence

Kansas

- **Claire and Lola's Law** – allows Kansas residents to have CBD oil of up to 5% THC
 - Protects from prosecution
 - Silent regarding workplace policies

Iowa

- **2017** law allowed individuals with certain debilitating medical conditions (beginning in **2018**) to use medical marijuana.
- **2019** – Governor states she will **not** sign recreational marijuana into law. This summer, she **vetoes** bill to expand medical marijuana program.
- Medical marijuana law **silent** regarding workplace policies
- Drug testing law **permits** refusal to hire/termination based on positive test
- **But?**

Nebraska & South Dakota

- No current laws permitting medical or recreational marijuana usage

Minnesota

- **Drug and Alcohol Testing in the Workplace Act** – employers *permitted* to take adverse action against employees who test positive
- ***BUT* Medical Marijuana Law** – *prohibits* employers from taking adverse action, including failure to hire or termination if decision based on status of patient on state registry (individuals allowed to consume medical marijuana) or a patient's positive drug test

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Important border states

- ***Illinois*** – permits ***medical*** marijuana
- ***Colorado*** – permits ***medical and recreational*** marijuana
- ***Arkansas*** – permits ***medical*** marijuana
- ***Oklahoma*** – permits ***medical*** marijuana

Federal laws

- Federal law continues to prohibit marijuana usage for any reason
- Impact of ADA discrimination prohibition/reasonable accommodation analysis on workplace prohibitions/adverse actions involving an employee's use of ***medical*** marijuana
 - Does ***not*** protect current, ongoing recreational marijuana use

What can employers do?

- Review applicable state laws where employer's workplace is located (not where employee resides)
- Review/update workplace policies making clear prohibitions against working while under the influence, possession on workplace property, sale, distribution, etc.
- Review drug testing policies regarding
 - when testing will be conducted (post-offer/pre-employment; reasonable suspicion; random; post-accident)
 - Required health care provider/other documents re: medical usage
 - when positive test could lead to adverse action (state law-dependent; federal law applicable)

What is the “workplace?”

- What can be included in employer’s definition of “*workplace*?”
 - Physical office, plant, facility location
 - Breakrooms/locker rooms
 - Parking lots
 - Company vehicles
- What about offsite employer-sponsored events?



• *Questions?*



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