

Illinois' Legalization of Medical Marijuana Affects Workplace Drug Policies

Illinois Governor Pat Quinn recently signed into law the Compassionate Use of Medical Cannabis Pilot Program Act (the Act). The Act authorizes a four-year pilot program for dispensing and using medical marijuana in Illinois. Starting January 1, 2014, individuals may obtain access to medical marijuana if they are diagnosed with one of the debilitating medical conditions listed in the statute and they register with the Illinois Department of Public Health (registered qualifying patient).

Employers in Illinois should take note of the Act's effect on workplace drug policies. An employer may not discriminate against an individual "solely for his or her status as a registered qualifying patient." In other words, an employer is prohibited from refusing to hire, terminating or taking any other adverse action against an individual simply because that individual is allowed access to medical marijuana. The only exception to this general prohibition is if the failure to discipline the individual would cause the employer to lose monetary or licensing related benefits under federal law.

The Act provides some protections for employers. Employers may continue to enforce drug testing, zero-tolerance and drug-free workplace policies, and may discipline a registered qualifying patient for violating a workplace drug policy. An employer may also discipline any employee for failing a drug test if the failure to do so would put the employer in violation of federal law or cause it to lose federal funding. Further, the Act does not create a cause of action against an employer for any action based on a good-faith belief that a registered qualifying patient used or possessed cannabis while on the employer's premises or during hours of employment.

An employer's discretion is not unlimited, however. An employer must perform an investigation before disciplining a registered qualifying patient for being impaired at work. The registered qualifying patient must have manifested "specific, articulable symptoms while working that decrease or lessen his or her performance of the duties or tasks of the employee's job position." The registered qualifying patient is also entitled to an opportunity to contest the basis of the employer's determination of impairment. In addition, the Act's effect on drug testing is not clear. Although employers may continue to enforce such policies

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and may discipline registered qualifying patients who are impaired at work, the Act does not address whether an employer may discipline a registered qualifying patient who is not impaired at work or during hours of employment, for a positive drug test result.

In light of these changes, employers in Illinois should re-evaluate their workplace drug policies and provide training to supervisors and management on how to determine whether an employee is impaired at work. Taking such steps will help to avoid problems and minimize the possibility of liability under the Act.

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