

Navigating Cannabis Legalization as a Federal Contractor or Grant Recipient

By January 1, 2020, medical or recreational cannabis use will be legal in at least 33 states, including Illinois, Michigan and Minnesota.^[1] The recent increase in cannabis legalization has caused many employers to reconsider their drug-free workplace policies. However, federal grant recipients and certain federal contractors must continue to abide by their obligations under the Drug Free Workplace Act (DFWA).

The DFWA requires all federal grant recipients and federal contractors with a contract of \$100,000 or more to maintain a drug-free workplace. Although the DFWA's requirements only apply to employees who are directly engaged in the performance of work pursuant to the federal grant or contract, it is often easier for employers to implement company-wide policies with respect to drug use.

Under the DFWA, a covered grantee or contractor must:

- Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations (the Statement);
- Establish a drug-free awareness program that informs employees about: (1) the dangers of drug abuse in the workplace; (2) the employer's drug-free workplace policy; (3) the availability of drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties for drug abuse violations;
- Provide each employee with a copy of the Statement;
- Inform employees that, as a condition of their employment, they must comply with the Statement and notify the employer of any criminal drug convictions that result from an occurrence in the workplace no later than five days after the conviction;
- If an employee reports a workplace-related drug conviction or the employer discovers an employee has a workplace-related drug conviction, notifying the grantor or contracting agency within 10 days after receiving such notice; and
- Sanction the convicted employee or require the convicted employee to participate in a drug abuse assistance or rehabilitation program.

Notably, the DFWA does not restrict employees' drug use outside the workplace. Additionally, the DFWA does not require the employer to implement a specific

POSTED:

Nov 22, 2019

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drug testing plan.

Increased recreational and medical cannabis use among employees is likely to lead to a higher rate of positive drug tests. Unlike alcohol, which has a half-life, tetrahydrocannabinol (THC), the psychoactive component in cannabis, can stay in an individual's system for an extended period of time. Thus, an employee who legally used recreational cannabis on Saturday could still test positive for THC the following Thursday. Further, an increasing amount of employees are prescribed cannabis for medical purposes.

Employers in states like Wisconsin, which has not legalized medical or recreational cannabis but is surrounded by states that have, will face unique challenges as employees begin to travel to neighboring states to legally use cannabis and return to Wisconsin with THC still detectable in their systems. Although some private employers may be tempted to relax their drug-free workplace policies so as not to alienate current or potential employees, federal grantees and covered contractors must still abide by their obligations under the DFWA.

If your business is a federal grantee or covered federal contractor and you have questions about your business's drug-free workplace policy, please contact Christopher K. Schuele, Shannon Toole, or your Reinhart attorney.

[1] This does not include the states—including Wisconsin—that have legalized low tetrahydrocannabinol (TCH)/high cannabidiol (CBD) products.

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