Illinois Medical Marijuana Law: What Employers Should Know

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Currently, 23 states have enacted laws to legalize medical marijuana. Medical marijuana laws are challenging for all employers, but particularly multistate employers, as employers must reconcile federal and varying state laws.

In November 2015, medical marijuana dispensaries in Illinois began treating patients under Illinois' Compassionate Use of Medical Cannabis Pilot Program Act ("Compassionate Use Act"). Illinois's medical marijuana law is one of the most restrictive in the nation. First, it is a four-year experiment. At the end of 2017, government officials in Illinois will evaluate whether to restrict, expand, or modify the approved uses of cannabis. Second, patients must be diagnosed with one of the specific, debilitating medical conditions enumerated in the Compassionate Use Act to be prescribed medical marijuana (chronic pain did not make the list). Third, the prescribing physician must have a prior and ongoing medical relationship with the patient. Finally, the law prohibits patients from growing their own marijuana.

In addition to the legal uncertainty, marijuana is not like other drugs. An individual could test "positive" for cannabis a month or more after usage, and a positive test does not mean the person was under the influence of marijuana at the time of the positive test.

Employers, at a minimum, should understand the following:

- The Compassionate Use Act specifically prohibits employers from discriminating against or penalizing a person based solely on his or her status as a patient qualified and register to receive medical marijuana. Employers should not fire an employee or refuse to hire an applicant solely because of their use of medical marijuana or their status as a registered user.
- The Compassionate Use Act does not have specific language that employers must offer the use of medical marijuana as a reasonable accommodation under the ADA. Although the underlying debilitating medical condition may qualify an individual for protections under the ADA, whether an employer decides to allow an employee to use medical marijuana as a reasonable accommodation under the ADA will be an individualized determination for the employer to

undertake.

- The Compassionate Use Act specifically states that employers may still enforce a “policy concerning drug testing, zero-tolerance, or a drug free workplace provided the policy is applied in a non-discriminatory manner.”
- The Compassionate Use Act includes an exception to its nondiscrimination provision by permitting employers to discriminate against or penalize registered users if failing to do so would put the employer in violation of federal law or cause it to lose a monetary or licensing related benefit under the federal law (e.g. owners of nuclear power plants, gas or oil pipelines, airlines and railroad, school bus drivers).

Employers in safety-sensitive industries may want to tighten the language of their zero-tolerance policies, while those in lower risk environments may take a less rigid approach if they believe marijuana usage by a registered user only takes place outside of work hours and the employee is not impaired at work. Now is an ideal time to review personnel polices involving drug testing and protocols for responding to employee drug use. Employers should carefully consider the company’s approach to drug testing of employees and develop a consistent and transparent plan for responding to drug test results.