

How will Ohio's medical marijuana law impact employers?

Medical marijuana is legal to use in Ohio with a physician's recommendation to treat various conditions including, but not limited to: cancer, epilepsy or seizure disorder, chronic pain, PTSD, etc. Various state agencies are tasked with drafting and implementing rules and regulations governing the manufacture and distribution of medical marijuana.

DRUG-FREE WORKPLACE PROGRAMS ARE UNAFFECTED

Ohio's medical marijuana law does not prohibit an employer from enforcing a drug testing policy, a Drug-Free Workplace Program (DFWP) or a zero-tolerance drug policy. Employers retain the right to prohibit the use, possession and distribution in the workplace and have "just cause" to fire a medical marijuana user provided a DFWP or zero tolerance drug policy is published to the workforce. Employers should consider updating existing policies to clearly define expectations regarding use of medical marijuana.

NO OBLIGATION TO ACCOMMODATE EMPLOYEE'S MEDICAL MARIJUANA USE

Employers are not required by the Americans with Disability Act to accommodate medical marijuana use due to the fact that it is not recognized as a disability and marijuana continues to be categorized as an illicit Schedule I substance under the Controlled Substance Act.

REBUTTABLE PRESUMPTION — WORKERS' COMPENSATION DEFENSES UNCHANGED

Provided that an employer has posted sufficient written notice to employees of its DFWP, a claimant who tests positive for marijuana within certain time frames of an alleged work-related injury is presumed ineligible for compensation benefits and must affirmatively establish that being under the influence or intoxicated *was not* the cause of injury for the claim to be allowed. ORC§ 4123.54(B) The rebuttable presumption invalidating an under-the-influence employee's claim remains in full force regardless of whether the injured worker's use was by an Ohio-licensed physician's recommendation.

PRACTICAL CONSIDERATIONS FOR OHIO EMPLOYERS

- Employers should seek to stay current on and consider revising or implementing their DFWP or zero tolerance policies to specifically address the legalization of medical marijuana.
- Whether an employer may choose to accommodate medical marijuana use in the workplace remains an open issue and will have to be judicially determined.
- NGC lawyers are well-versed on these issues, should you need assistance.

— **Josh Berggrun**
berggrun@nicola.com



Nicola, Gudbranson & Cooper LLC
 25 West Prospect Avenue, Suite 1400
 Cleveland, Ohio 44115

Tel: (216) 621-7227

Fax: (216) 621-3999

www.nicola.com

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