



Employee Use of Medical Marijuana: What Must Employers Allow?

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The Michigan Medical Marijuana Act was passed into law in the fall of 2008, with administrative rules issued April 4, 2009. The law permits the use of marijuana to help treat patients with a "debilitating medical condition" as defined in the law. Patients must register with the Michigan Department of Community Health to apply for a registry identification card that identifies them as qualifying for the medical use of marijuana. To register, the patient must submit to the Department of Community Health an application form, fee, and written certification provided by a physician. Once the patient receives an ID card, he or she is exempt from Michigan's criminal laws for using marijuana to mitigate the symptoms or effects of the person's debilitating medical condition.

Employers who have policies that prohibit drug use, and who conduct drug testing accordingly, have questioned the extent to which they must change their drug policies for employees registered to use medical marijuana. The law does state that "nothing in this act shall be construed to require an employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana." Therefore, employers are certainly not required to allow the use of marijuana at the workplace.

The law also states that a person who is using marijuana for medical purposes is not permitted to "undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice..."

Until courts clarify the issue further, employers should treat employees who are registered to use medical marijuana as they treat employees who are authorized to use prescription medications. If use of medical marijuana hinders or impairs an employee's job performance, the employee should be subject to discipline or take a medical leave until he or she is able to return to the job. If an employee's use of medical



marijuana at home does not affect his or her performance on the job, then employers should be very hesitant to terminate or discipline the employee.

Over the next few years, Michigan courts will interpret the Michigan Medical Marijuana Act as it relates to employees. In the meantime, employers should consult their attorneys when issues of medical marijuana use arise.

