

BLOGS

Archives;Discrimination;Employment Law Updates;Health Care;Workplace Policies

Will Minnesota's New Medical Marijuana Law Leave Employers High and Dry?

Minnesota recently became the 22nd state to legalize medical marijuana use and, as part of the new law, to enact new potential employment protections for registered users of medical marijuana. Minnesota's new marijuana law has already gone into effect, but distribution of marijuana for medical purposes is not expected until July 1, 2015. Employers should use this extra time to familiarize themselves with Minnesota's new law and its potential implications. While the new Minnesota law purports to impose some new employment law obligations on employers, it also raises many unanswered questions. Because marijuana use is still illegal criminal activity under federal law, it is currently unclear if Minnesota courts will strictly enforce the new state law against employers or whether the federal law criminalizing *all* marijuana use will trump the new state law.

Limited Protection for Medical Marijuana Use

By way of background, Minnesota's new medical marijuana law has been described as one of the narrowest and strictest medical marijuana laws in the country. The law requires authorized medical marijuana users to register with the state and only permits the use of marijuana delivered in liquid, pill, or vaporized form. The law does not protect or authorize the smoking of marijuana cigarettes. Additionally, medical use of marijuana is only authorized for nine specified medical conditions.

Employee Protections Under the New Law

Historically, it has been lawful for Minnesota employers to make adverse decisions about a job applicant or employee based on their proven use of marijuana so long as any adverse decisions were made in accordance with Minnesota's drug and alcohol testing law. This is because marijuana has been, until now, illegal under both federal and Minnesota law.

Now, the future is suddenly less clear. While marijuana is still illegal under federal law, Minnesota's drug testing law for applicants and employees defines illegal drugs by pointing to Minnesota not federal – law. In addition, Minnesota's new medical marijuana law purports to prohibit an employer from discriminating against or otherwise penalizing a person in connection with

Related People

Pamela J. Kovacs

Counsel

Minneapolis

612.632.3398

pamela.Kovacs@lathropgpm.com

hiring or employment based on: (1) the person's status as a patient enrolled in the medical marijuana registry program; or (2) a registered patient's positive drug test for marijuana.

There are a few important exceptions to this prohibition on discrimination, but these exceptions do not clearly indicate how the new state law interacts with the federal criminal law banning all marijuana use:

- First, an employer can penalize a registry patient for a positive marijuana drug test if the patient used, possessed, or was impaired by medical cannabis on the premises of the place of employment or during the hours of employment. Because marijuana can stay in someone's system for some time after use, however, it may be difficult for an employer to establish whether an employee used medical marijuana or was impaired at the office or during working hours.
- Second, the new law permits adverse action against a patient on the state registry if the failure to act "would violate federal law or regulations or cause an employer to lose a monetary or licensing-related benefit under federal law or regulations."

Impact on Other Laws

In addition to the newly enacted protections discussed above, the new marijuana law could also impact other employment law obligations. Minnesota has a lawful consumable products (LCP) statute that prohibits an employer from taking adverse action against a job applicant or employee for consuming lawful products outside of work, such as alcohol or tobacco. It is now unclear whether medical marijuana is a lawful consumable product given that the product is lawful under state, but not federal, law.

In addition, an employer has not historically had an obligation to accommodate marijuana use as a possible disability under the Americans with Disabilities Act (ADA), because current illegal drug use is not protected by the ADA. Apart from the ADA, Minnesota has its own employment discrimination law the Minnesota Human Rights Act that requires accommodations for covered disabilities. While an employer is unlikely to have to tolerate marijuana use or impairment at work, the new medical marijuana law may require employers to have to revisit their accommodation obligations under state law where medical marijuana use occurs outside the workplace and outside of working hours.

Uncertainty in Light of Federal Law

As medical marijuana begins to be distributed in the state, employers should stay tuned to see how the courts interpret Minnesota's new medical marijuana law especially in light of the continued federal prohibition on marijuana use.