

Drug & Alcohol Testing Law Advisor

Developments in Regulating Workplace Drug and Alcohol Testing

Pennsylvania Enacts Medical Marijuana Law

By Kathryn J. Russo on April 18, 2016

Pennsylvania Governor Tom Wolf signed legislation that legalizes the use of marijuana for medicinal uses on April 17, 2016. The new law, [Senate Bill 3](#), known as “The Medical Marijuana Act” permits patients suffering from ALS, autism, cancer, Crohn’s disease, nerve damage, epilepsy, glaucoma, HIV/AIDS, Huntington’s Disease, inflammatory bowel syndrome, intractable seizures, multiple sclerosis, Parkinson’s disease, post-traumatic stress disorder, severe chronic or intractable pain and sickle cell anemia to use marijuana for medicinal use. Medical marijuana only may be dispensed in the following forms: pill, oil, topical forms (including gel, creams or ointments), vaporization or nebulization, tincture or liquid. Smoking marijuana is not permitted under the law.

Although the law takes effect in thirty days, the Department of Health must promulgate rules and regulations for the establishment and operation of marijuana dispensaries as well as the patient registration process and issuance of identification cards to patients and caregivers. The implementation of the program is expected to take between 18 and 24 months.

There are several provisions in The Medical Marijuana Act that impact employers. First, there is a broad anti-discrimination provision:

No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee’s compensation, terms, conditions, location or privileges solely on the basis of such employee’s status as an individual who is certified to use medical marijuana.

However, employers need not accommodate the use of marijuana at work, and may discipline employees who are “under the influence” of marijuana at work:

Nothing in this Act shall require an employer to make an accommodation of the use of medical marijuana on the property or premises of any place of employment. This Act shall in no way limit an employer’s ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee’s conduct

falls below the standard of care normally accepted for that position.

Nothing in this Act shall require an employer to commit an act that would put the employer or any person acting on its behalf in violation of federal law.

Additionally, the law prohibits the following in certain safety-sensitive jobs:

A patient may not operate or be in physical control of any of the following while under the influence with a blood content of more than 10 ng/ml: (1) chemicals which require a permit issued by the federal government, state government, federal agency or state agency; or (2) high-voltage electricity or any other public utility.

A patient may not perform any employment duties at heights or in confined spaces, including, but not limited to, mining while under the influence of medical marijuana.

A patient may be prohibited by an employer from performing any task which the employer deems life-threatening, to either the employee or any of the employees of the employer, while under the influence of marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.

A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk while under the influence of medical marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.

While these provisions appear to benefit employers who operate safety-sensitive workplaces, they also raise a number of questions which are not answered by the statute, including, what is the definition of “under the influence of marijuana”? While most employers rely on urine testing for drugs, the active ingredient in marijuana still can show on a urine drug test days or even weeks after use (depending on the frequency of use).

Employers with operations in Pennsylvania should review their drug and alcohol policies and consult with counsel to determine how they will address these issues once the law goes into effect.

