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# Nevada's Medical Marijuana Law Takes Effect April 1, 2014

By Kathryn J. Russo on April 1, 2014

Nevada's medical marijuana law, Nevada SB 374, takes effect on April 1, 2014. What does the law mean for Nevada employers? The law explicitly states that it does not "require any employer to allow the medical use of marijuana in the workplace." However, the law further states that it does not "require an employer to modify the job or working conditions of a person who engages in the medical use of marijuana that are based upon the reasonable business purposes of the employer but the employer must attempt to make reasonable accommodations for the medical needs of an employee who engages in the medical use of marijuana if the employee holds a valid registry identification card, provided that such reasonable accommodation would not:

(a) Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or

(b) Prohibit the employee from fulfilling any and all of his or her job responsibilities."

It appears then, that if an employee's use of medical marijuana would not pose any threat of harm, or pose an undue burden on the employer, and would not prevent the employee from performing his or her job, Nevada employers must consider reasonable accommodations for users of medical marijuana under state law. But doesn't this requirement contradict federal law?

Indeed, marijuana still is illegal under federal law and continues to remain classified as a Schedule I drug under the federal Controlled Substances Act. Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and the absence of any accepted safety for use in medically supervised treatment. State medical marijuana laws, such as Nevada's, conflict with federal law and therefore pose significant challenges for employers. This is particularly true in the context of drug testing. For example, can employers refuse to hire applicants who test positive for marijuana even if they possess a medical marijuana identification card?

There have been a handful of legal challenges to medical marijuana laws in other states (California, Colorado, Michigan, Montana, Oregon and Washington) and thus far, the outcomes have been favorable for employers. Some of these courts have recognized that state law cannot permit that which is impermissible under federal law. For example:

In Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries, 230 P.2d 158 (Or. 2010), the Supreme Court of Oregon held that Oregon employers are not obligated to accommodate employees' medical use of marijuana, even when that use is linked to a disabling medical condition and allowed under state law. Specifically, the Court concluded that while the State may lawfully exempt medical marijuana users from state criminal liability, it may not authorize conduct that directly conflicts with federal law.

The California Supreme Court similarly has held that "no state law could completely legalize marijuana for medical purposes because the drug remains illegal under federal law, even for medical users." Ross v. RagingWire Telecommunications, Inc., 174 P.3d 200, 204 (Cal. 2008).

More recently, the Colorado Court of Appeals upheld the firing of a quadriplegic man for off-duty medical marijuana use, finding that, because marijuana is illegal under federal law, employees have no protection under state law to use it at any time. Coats v. Dish Network LLC, 303 P.2d 147 (Colo. Ct. App. 2013) (this case will be reviewed by the Colorado Supreme Court).

While employers have been successful in medical marijuana lawsuits to date, the proliferation of state medical marijuana laws and recreational marijuana laws surely will lead to more litigation. Employers should be cognizant of the laws in the states in which they operate before deciding on a course of action with respect to medical marijuana users.