jackson lewis
all we do is work

New Connecticut Medical Marijuana Law

Date: 6.13.2012

Connecticut has become the 17th state in the country to permit the use of medical marijuana.

"An Act Concerning the Palliative Use of Marijuana" (Public Act No. 12-55) makes it legal for certain individuals to possess marijuana for palliative use. "Palliative use," in part, is defined as alleviating an individual's symptoms of a "debilitating medical condition" or the effects thereof. A qualifying individual will not be subject to any penalty, such as criminal prosecution or civil penalties, if they meet certain conditions. Protected individuals also receive additional protections from discrimination based on their protected status in education, housing and employment. The majority of the Act's provisions go into effect on October 1, 2012.

Who is Qualified?

The Act provides that a "qualifying patient" receives protection under the law if he or she meets certain conditions. First, the individual must be at least eighteen (18) years old. Second, the individual must be a Connecticut resident. Third, the individual must be diagnosed by a physician as having a "debilitating medical condition." However, the new protections are not afforded solely to the individual suffering from the medical condition. His or her "primary caregiver" also is protected.

Medical Conditions Covered

Not all medical conditions qualify for protection under the Act. The Act defines certain conditions, such as cancer, glaucoma, HIV and AIDS, as "debilitating medical conditions." In addition, the Department of Consumer Protection ("DCP") (the State Agency charged with administering the Act) may approve additional conditions pursuant to its regulatory authority.

Enforcement

The Commissioner of Consumer Protection is charged with creating regulations and implementing a registration system whereby both the qualifying patient and primary caregiver must obtain a registration certificate from DCP. DCP will be responsible for licensing marijuana dispensaries and marijuana producers. Except in limited circumstances, information obtained by DCP from qualifying patients or primary caregivers will not be subject to disclosure under the state's Freedom of Information Act.

The Act provides for certain misdemeanor penalties if an individual fraudulently represents to a law enforcement official his or her use of palliative marijuana or certification validity.

What This Means for Employers

Employers are *prohibited from refusing to hire, discharging, penalizing or threatening* an employee based solely on the employee's status a qualifying patient or primary caregiver. Accordingly, not only do employers need to be aware of this newly created protected status for individuals using palliative marijuana, but they also must be aware that any employee who serves as a primary caregiver may be protected.

Employers who provide landlord services are prohibited from refusing to rent to a person or take action against a tenant based solely on the individual's qualifying patient or primary caregiver status. Similarly, schools are prohibited from discriminating against any student based on protected status under the Act.

The new law does not mean employers are entirely without recourse in managing use of palliative marijuana at the workplace. The Act provides several exceptions to its prohibitions, including when they are in conflict with an employer's federal funding conditions. Also, the Act does not require health insurance coverage for palliative use of marijuana.

Possibly most significantly, the Act allows employers to prohibit the use of intoxicating substances during work hours and to discipline an employee for being under the influence of intoxicating substances during such hours.

Employers should consider amending their employee policies and training managers on these new guidelines. However, managers should bear in mind that employees already may be protected under state and federal disability and medical leave laws based on their medical conditions alone, regardless of whether the employee uses palliative marijuana or not. Many of the medical conditions that qualify for protection under the Act also may be considered protected under federal and state laws.

Although nothing in the statute affords a private right of action to an employee discriminated against under the Act, this will certainly be an issue to watch. The Act also contains other ambiguities, such as whether and when an employer can request proof of an employee's qualifying status and, because the Act solely addresses "use," whether an employer can prohibit marijuana possession at the workplace. Employers should review their policies and practices to determine how this new law may affect their hiring practices, including drug testing.

Please feel free to contact your Jackson Lewis attorney to discuss the relationship between your workplace policies and Connecticut's new medical marijuana law.

practices

Drug Testing and Substance Abuse Management

Management Education, including e-Based Training

---

contact

Beverly W. Garofalo

Sarah R. Skubas