

Community Health Rules Leave Employers in Haze Over Medical Use of Marijuana

April 28, 2009

New rules issued earlier this month by the Department of Community Health provide little guidance to employers dealing with the ramifications of medical marijuana use by their employees under the Michigan Marihuana Act.

Last year, Michigan voters approved a ballot proposal allowing the use of marijuana by individuals who have a debilitating medical condition. In response, the state legislature passed the Michigan Marihuana Act, which became effective in December 2008.

The Department was required to promulgate rules within 120 days of the effective date. However, those rules, which were issued this month, shed little light on how an employer is supposed to deal with the ramifications of the medical use of marijuana by employees.

Section 7 of the law states that “[n]othing in this act shall be construed to require ... [a]n employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.” Thus, it is clear that an employer does not need to allow the employee to smoke or ingest food laced with marijuana at the workplace and it need not allow an employee to work while the employee is high. However, unlike testing for being under the influence of alcohol, an employee can test positive for marijuana long after its effect has worn off. The law also prohibits, among other things, smoking marijuana in public or operating a motor vehicle while under the influence.

However, the Department’s rules specify that “[a] qualifying patient...shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to...disciplinary action by a business...for the medical use of marihuana in accordance with the act...” Therefore, disciplining an employee who is using marijuana in a manner consistent with the act would violate the law.

The Department is responsible for receiving and processing applications for persons with a debilitating medical condition. Those who qualify for either the medical use of marijuana or as a “registered primary caregiver,” someone who is permitted to grow up to 12 marijuana plants in a locked facility, will be issued a registry identification card.

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Employers should continue to enforce their alcohol/drug policies as they have in the past. However, if an employee should respond to a directive to submit to drug/alcohol testing with the presentation of a registry identification card, document the behaviors and other objective indicators resulting in the need for the test and seek the advice of legal counsel immediately.