

## Medical Marijuana And Your Drug Free Workplace

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Arizona's Medical Marijuana Act, (the "Act"), A.R.S. §36-2810, was effective January 1, 2011. Many employers did not know how to incorporate the Act into their existing drug-free workplace policies.

The Act prohibits an [employer](#) from discriminating against an employee because he or she is a registered medical marijuana user, but neither the Act nor the ADHS regulations issued to interpret and implement the Act provide much guidance as to what that means or how employers can be sure they comply with this new law. The Act requires that qualified medical marijuana patients be registered with the state and issued a registration card and states that employers may not discriminate against applicants and employees who are registered card holders. For example, an employer may not make hiring and firing decisions or take disciplinary action against an employee who is a registered card holder unless the employee uses medical marijuana at work or the employer can show that the employee was impaired while at work. The practical problem is how can the employer be reasonably certain that it will be able to show that the employee was impaired? A misstep could lead to some very unfortunate legal consequences.

Fortunately, help has arrived. House Bill 2541, which became effective July 20, 2011, and retroactively applies to April 12, 2011, provides employers with at least some guidance in dealing with these issues. It is actually an amendment of the existing Arizona Drug Testing of Employee's Act and allows "employers to take action against employees who are believed, in good faith, to be impaired at work due to prescribed, illegal or synthetic drug use." It also sets out a laundry list of factors the employer may consider when making that determination.

House Bill 2541 also includes several new provisions that allow employers to refuse to place any employee who uses medical marijuana in a safety sensitive position. Safety-sensitive jobs are defined as "any job that requires duties or tasks that could affect the safety or health of the employee performing the task or others." It also allows employers to remove any employee who the employer believes in good faith is using any drug, prescribed or otherwise (subject, of course, to ADA requirements), if the drug could cause impairment or negatively impact the employee's job performance. This includes medical marijuana.

Another important provision of House Bill 2541 is to allow employers to take disciplinary action against any employee based on its good faith belief that the employee is impaired while at work. "Good faith is defined as "reasonable reliance on fact, or that which is held out to be factual, without the intent to deceive or be deceived and without reckless or malicious disregard for the truth."

It is important for employers to know that the new medical marijuana law allows employers to use a medical marijuana verification system to verify a registry identification card for a new applicant before extending an offer of employment. It also allows employers to verify registration cards of existing employees. More importantly, the new law protects an employer from liability when it takes disciplinary action against an employee under the good faith belief that the employee was impaired, used or was in possession of any impermissible drug while at work.

Now don't get too excited. Even though employers have been given more guidance about complying with the Act, the Act itself and its ultimate impact on employers and employees have been called into question. In late May, Governor Jan Brewer filed a federal lawsuit requesting a declaratory judgment to determine if the Arizona Medical Marijuana Act is in conflict with federal laws prohibiting the use, possession or sale of marijuana in any form or for any reason. The lawsuit was necessary because of threats being made by the U.S. Attorney to enforce federal laws notwithstanding Arizona's new medical marijuana law. Until that matter is resolved, we recommend that employers seek legal counsel to ensure that their drug-free workplace policies and drug testing policies are in compliance with existing laws or before taking any adverse employment action against any employee who is suspected of drug use.

To read more about Arizona Medical Marijuana Act click the below link:

<http://www.azdhs.gov/medicalmarijuana/>

To read House Bill 2541 click the below link:

[http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/50leg/1r/summary/h.hb2541\\_04-21-11\\_astransmittedtogovernor.doc.htm&Session\\_ID=102](http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/50leg/1r/summary/h.hb2541_04-21-11_astransmittedtogovernor.doc.htm&Session_ID=102)

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