



## Legal Alert: Arizona Employers Must be Ready for New Medical Marijuana Use Law

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Almost two weeks after the polls closed, Arizona became the 15th state in the nation to allow the use of marijuana for medical purposes. Proposition 203, or the Arizona Medical Marijuana Act, appeared unlikely to pass early on election night. However, after the early voter and provisional ballots were finally counted, the tally put the yes votes ahead by a mere 4,341 votes out of the nearly 1.7 million cast.

The election results became official November 29, 2010. The Arizona Department of Health Services (ADHS) has 120 days from that date to promulgate regulations implementing the law. According to information from the ADHS, the agency will publish an informal draft of the regulations by December 17, 2010 and a formal draft by January 31, 2011. The agency has stated that it expects to issue final regulations by March 28, 2011. Thus, by spring of 2011, Arizona employers need to have reviewed their drug-testing and employment discrimination policies to ensure they comply with the new law.

### ***What Does the Law Provide?***

Generally, the law permits medical marijuana cardholders (which includes qualifying patients, designated caregivers, and nonprofit medical marijuana dispensary agents) to possess, transport and, in some situations, cultivate an allowable amount of marijuana for medical use. Significantly for employers, the law prohibits discrimination against medical marijuana cardholders and registered qualifying patients.

*Discrimination Prohibited:* The law provides that employers may not discriminate against a person in hiring, termination or by imposing any term or condition of employment or otherwise penalize a person because of that person's status as a medical marijuana cardholder, unless a failure to do so would cause an employer to lose a monetary or licensing related benefit under federal law or regulations. As noted above, medical marijuana cardholders may include not only patients, but also designated caregivers and nonprofit medical marijuana dispensary agents. Thus, the law creates a new category of individuals protected from discrimination.

The law also prohibits discrimination against a registered qualifying patient based on that person's positive test for marijuana unless the patient was impaired by marijuana on the employer's premises or during the hours of employment. While the law does not require an employer to permit an

employee to ingest marijuana at work or to work while under the influence of marijuana, it also states that a registered qualifying patient is not considered to be under the influence of marijuana solely because that person tests positive for marijuana metabolites in an amount that is insufficient to cause impairment.

*Who is a Qualifying Patient?* A qualifying patient is a person who has been diagnosed by a physician as having a debilitating medical condition. Debilitating medical conditions include diseases such as cancer, HIV/AIDS, Hepatitis C, amyotrophic lateral sclerosis (Lou Gehrig's disease), Crohn's disease, and other conditions that result in certain symptoms such as wasting syndrome, severe and chronic pain, severe nausea, or severe and persistent muscle spasms. For a qualifying patient to receive a registry identification card, the patient must submit written certification from his or her physician stating that in the physician's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

ADHS will establish a process for issuing photo ID cards for qualified patients, designated caregivers, and authorized agents of dispensaries. The law requires the ADHS to act on applications for ID cards within 10 days and to issue photo ID cards within 5 days after approving an application. Thus, based on the time-frame given by the ADHS, employers can expect to see medical marijuana ID cards by mid-April 2011 and should be prepared to comply with the law by that date, at the latest.

***Employers' Bottom Line:***

The law presents employers with a number of issues, some of which may be clarified after the ADHS issues its regulations. Zero-tolerance and pre-employment drug-testing policies likely will present the most challenges under the new law in light of the prohibition of discrimination against qualifying patients based on the presence of marijuana metabolites insufficient to cause impairment. Because there is no accepted testing standard for determining impairment due to marijuana use, this determination will by necessity be subjective unless the state issues regulations defining a standard to be used under the law.

If you have questions regarding the law or how to ensure that your employment policies comply with its provisions, please contact the author of this Alert, Dinita James, [djames@fordharrison.com](mailto:djames@fordharrison.com), or the Ford & Harrison attorney with whom you usually work.