

To: Our Clients and Friends

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MEDICAL MARIJUANA: ARIZONA LAW AND THE AMERICANS WITH DISABILITIES ACT

While employers have implemented policies to comply with Arizona's medical marijuana laws, the federal Ninth Circuit Court of Appeals issued a ruling last week that could exclude employees who use medical marijuana from protection under the Americans with Disabilities Act (ADA), even when those employees are authorized to use medical marijuana under state law.

The ADA generally provides protection to persons who use drugs under the supervision of a licensed health care professional. But, the Ninth Circuit's ruling in *James vs. City of Costa Mesa* established that the use of medical marijuana, even when supervised by a licensed health care professional, does not have ADA protection.

The Ninth Circuit reasoned that, although certain states in the Ninth Circuit authorize marijuana use for medical purposes, federal law still prohibits the use of medical marijuana. Explaining that the ADA defines "illegal drug use" with reference to federal law, and not state law, the Ninth Circuit concluded the ADA does not protect against discrimination on the basis of medical marijuana use.

Although the issue considered by the Court did not arise in the employment context, because the terms analyzed by the Court are the same as those used in the employment provisions of the ADA, it is reasonable to expect that the Court's decision will also apply in the employment context.

POINTS TO REMEMBER:

Do Not Discriminate on the Basis of Disabilities: Although medical marijuana use does not protect an employee under the ADA, the employee's underlying disability might.

Be Familiar with State Law Protections: Although the ADA does not protect medical marijuana users in the employment context, Arizona laws offer protections to these employees. Have and follow a written policy on medical marijuana in the workplace.

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