

Managing the Haze of the New Medical Marijuana Law

January 2, 2013

On November 6, 2012, Massachusetts voters approved a ballot measure making Massachusetts the eighteenth state to decriminalize the use of medicinal marijuana. [The law](#) became effective yesterday, January 1, 2013. The Massachusetts Department of Public Health has until May 1, 2013 to issue its regulations. The DPH's regulations will provide answers to many of the outstanding legal questions and details. Despite some uncertainty about what the law may require of employers in the future, here's some comforting news:

1. Employers need not, and indeed should not, permit an employee to use medical marijuana while on the job or on the employer's premises.
2. Health insurance companies need not cover the cost of medical marijuana, so the law should not result in any changes to employers' policies or premiums.

Who qualifies to use medical marijuana?

A patient who has been diagnosed with a debilitating medical condition, such as cancer, glaucoma, HIV-positive status or AIDS, hepatitis C, Crohn's disease, Parkinson's disease, ALS, or multiple sclerosis. This list is not exclusive.

How does a patient obtain permission to use medical marijuana?

Physicians must provide written certification that the patient suffers from a debilitating medical condition and that using marijuana likely would result in a net benefit to the patient. Eventually, patients will be able to buy marijuana from state-sanctioned distribution centers. Until those distribution centers open, patients may grow a 60 day supply of marijuana for their own medical use.

Must an employer provide its qualified employees with the opportunity to use marijuana at work?

No. The law does "not require any accommodation of the medical use of marijuana in any workplace, school bus or grounds, youth center, or correctional facility." Furthermore, there are several reasons why employers should not voluntarily permit the use of medical marijuana by qualified employees. For example, the Occupational Safety and Health Act requires employers to provide a safe and healthful work environment. In certain safety-sensitive positions, the use of marijuana – regardless of whether it is used for medical purposes – would be dangerous. Also, under the Drug-Free Workplace Act of 1988, companies that receive federal contracts must prohibit the use of marijuana in the workplace.

Can employers still drug test? Can they drug test qualified employees for medical marijuana?

Whether a drug test violates an employee's right to privacy always is balanced against an employer's legitimate business interest in knowing whether its employees are using drugs. The same is true with a qualified employee's use of medical marijuana. If an employer has a legitimate interest, such as safety or productivity concerns, the use of testing is likely to supersede the employee's privacy interest. As always, employers should consistently apply their drug testing policy and take caution not to single out those who use, or who are suspected of using marijuana for medicinal purposes.

Will employers be required to change their health insurance policies to cover medical marijuana?

No. According to the Department of Public Health, "nothing in the law requires any health insurance provider, or any government agency or authority, to reimburse any person for the expenses of the medical use of marijuana."

What else should I know?

- The law does not provide qualified users of medical marijuana immunity from federal prosecution, nor does the Massachusetts state law supersede the federal prohibition against marijuana use.
- Possession, cultivation, or sale of marijuana for nonmedical purposes still is not legal.
- Even medicinal use of marijuana in a public place is proscribed.

Are there unanswered questions for employers?

Yes. While employers need not permit a qualified employee's use of medical marijuana on the job, we don't know whether employers otherwise will be required to provide reasonable accommodations. For example, let's assume an employee is undergoing chemotherapy treatment for cancer, and that nausea tends to impact the employee during the late afternoon. The employee has a doctor's authorization to use marijuana to help control the side effects from chemo. While it is clear that the employer cannot permit the employee to smoke marijuana while on the job, it is not clear whether the employer will be required to provide the employee with an associated accommodation, such as permission to leave work early to avail herself of the medical marijuana. We can hope that the Department of Public Health will provide employers with this type of important guidance.