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MEMORANDUM

TO: Agency Human Resources Managers

FROM: Kathy Peckardt, Human Resources Director *Marie Isaacson for*

DATE: April 26, 2011

SUBJECT: Medical Marijuana

Please see attached information regarding Proposition 203 (Medical Marijuana) and its impact on the work place. Please contact Marie Isaacson, Human Resources Deputy Director, at 542-7290 if you have any questions.

c: Marie Isaacson, HR Deputy Director
Jackie Mass, Employment Manager
Christine Bronson, Employee Relations Manager

Attachment

Medical Marijuana Act – State Agency Guidelines

Introduction

With the passage of Proposition 203 (the “Act”), Arizona became the 15th state to legalize marijuana for medicinal purposes. The Act permits a qualifying patient with a debilitating medical condition to obtain marijuana from a medical marijuana dispensary and to use the marijuana to treat or alleviate the condition.

The Act became effective after the Arizona Department of Health Services (ADHS) published the Arizona Medical Marijuana Rules required to set up dispensaries and issue identification cards. ADHS released the rules on March 28, 2011 and has since clarified a few points. These clarifications are reflected in the Arizona Medical Marijuana Rules filed with the Secretary of State’s Office on April 13, 2011 and posted on the ADHS web site.

Overview

The new law precludes an employer from discriminating against, terminating or penalizing any employee solely because that employee is a card holder, or solely because the card-holding employee has tested positive for marijuana. The Act creates an exception for employers who would “lose a monetary or licensing-related benefit under federal law or regulations.”

Registered card holders, however, may not use, possess, or be impaired by marijuana in the workplace or during the hours of employment. If an employee uses marijuana or is in possession of marijuana while on the job, the employer can take disciplinary action against that employee.

Impairment

If an employee is impaired by marijuana while at work or during work hours, the employer may discipline the employee. Unlike alcohol, where there are clear standards of impairment, there is conflicting literature in the medical community regarding marijuana impairment levels. Testing methods may not guarantee a finding of impairment based solely upon the level of marijuana or its metabolites found in a person’s system. This requires that employers look for other outward signs of marijuana impairment.

The American Council for Drug Education (www.acde.org) has compiled a list of marijuana impairment indicators. The safe approach would be to identify the indicators and make a note of these indicators whenever they are observed in an employee who appears to be impaired by marijuana at work. Subsequent testing may confirm or rule out an observed impairment. Therefore, employers will need to train managers on how to recognize these signs of impairment in the workplace.

Please also note that the State legislature has passed HB2541, employee drug testing; medical marijuana. This bill provides a definition of “impairment” in the state statutes. This bill also permits an employer to use the medical marijuana verification system to verify a registry identification card provided by an employee or an applicant who has received a conditional job offer. More information will be provided if the Governor signs this bill into law.

Random Drug Testing

A challenge will come from agencies that have a random drug testing program where a card holder is randomly selected and tests positive for marijuana use, but is not impaired. Presence of the drug in a card holder’s system does not mean impairment. Agencies may not discipline for mere presence in the employee’s system alone; an individual must be impaired. A determination of “impairment” would be fact specific for each situation.

Medical Marijuana Act – State Agency Guidelines

Commercial Driver's License (CDL)

If an employee tests positive for marijuana use and the employee is in a position that requires a commercial driver's license (CDL), the agency must report the information to the Arizona Department of Transportation, Motor Vehicles Division (MVD). MVD will revoke an individual's CDL if they test positive for marijuana, regardless of whether it was legally used. If a CDL is required for an employee's position, the employee can be separated because he does not meet the qualifications for the position. If such a situation arises, agencies should work closely with their assigned Assistant Attorney General.

Drug-Free Workplace Act of 1988

Even though most state agencies are covered by the Drug-Free Workplace Act of 1988, that law does not require employers to take disciplinary action against employees who test positive for illegal drugs, including marijuana. In addition, it is not clear that employers subject to the Drug-Free Workplace Act or other federal contract requirements will have *carte blanche* authority to take disciplinary action against employee card holders who test positive for marijuana. It is recommended that agencies with federal contracts work with their Assistant Attorney General to review such contracts and requirements relating to a drug-free workplace. The Attorney General's Office indicated that they will review the individual federal grants and contracts, and then make a decision regarding its impact on a case-by-case basis.

Drug Testing Policies/Pre-employment Background Checks

Agencies should review and determine if existing drug testing policies or pre-employment background checks requiring disclosure of the use of illegal drugs need to be amended to provide an exception for lawful medical marijuana use outside of work hours and away from the workplace. Agencies may also want to advise their employees that medical marijuana will be treated like any other prescription drug. Policy amendments should remind employees that they should not operate heavy equipment or engage in other potentially dangerous activity if they are impaired by medical marijuana.

ADOA is currently reviewing its policies. ADOA will make its policies available to other agencies for review and use, if desired. It is recommended that if an agency revises its own policy that it be reviewed and approved by the Attorney General's Office, Employment Law Section, prior to release. If you have any questions regarding this information, please contact Marie Isaacson, Human Resources Deputy Director, 602-542-7290.