

EMPLOYMENT LAW ALERT  
FEBRUARY 19, 2014

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MEDICAL MARIJUANA IS HERE:  
WHAT IT MEANS TO MASSACHUSETTS EMPLOYERS

By the summer of 2014, the smell of marijuana wafting in the breeze will confront Massachusetts employers with a host of new issues. On January 31, 2014, the Massachusetts Department of Public Health gave preliminary approval to the first 20 medical marijuana dispensaries in 10 Massachusetts counties. Medical marijuana is coming soon to a town near you.

Massachusetts employers will face many questions regarding medical marijuana implementation. Will an employee holding a medical marijuana registration card be allowed to use marijuana at work? Will an applicant or employee who tests positive for marijuana be subject to refusal to hire, discipline or termination? These and other issues will certainly find their way into legal proceedings before too long.

The Massachusetts statute provides some guidance, specifically: "Nothing in this law requires any accommodation of any *on-site* medical use of marijuana in any place of employment...or of smoking medical marijuana in any public place."

The Massachusetts law speaks only to "on-site" use of marijuana. The statute is silent on the question of whether an employer is required to reasonably accommodate an employee's use of medical marijuana under the Americans with Disabilities Act or the Massachusetts Fair Employment Practices Act. The answer, however, is likely "no." To date, every federal court in other jurisdictions concluded that the employee had no right to accommodation under either the ADA or equivalent state law, because marijuana is still illegal under federal law. However, no Massachusetts court has yet addressed this issue.

The best guidance for now, pending a decision of a Massachusetts court or change in federal law, is that an employer does not have to allow marijuana use during working hours and is within its rights to not hire or to terminate an employee who tests positive for marijuana, as long as the employer has a bona fide job related reason for requiring a negative test. Employers who operate in Connecticut, Maine, Rhode Island, or New Hampshire, however, should be aware of state statutes placing restrictions on an employer's ability to discriminate against an employee based on his or her status as a medical marijuana patient.

This is an evolving area and employers are best advised to stay in touch with their employment counsel.

If you have any questions about this alert or would like to discuss your company's employment policies, please contact one of our employment partners, [Gary M. Feldman](#) or [Tamsin R. Kaplan](#), in our [Employment Law Practice Area](#).

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