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AUGUST 2010



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HIGH TIME FOR SOME ANSWERS: MEDICAL MARIJUANA UPDATE

By David Briggs

For more than a decade, Oregon employers have struggled with how to enforce their zero-tolerance drug policies when an employee presented a medical marijuana card. The big question has been whether employers need to ignore their zero tolerance policies and accommodate an employee's use of marijuana under state disability laws.

That question has spurred countless seminars, workshops, and phone calls to attorneys. With more than 36,000 medical marijuana cardholders in Oregon, employers have had good reason to pay attention to this issue.

In April, the Oregon Supreme Court finally gave us a clear answer to the question. Per the court: "Under Oregon's employment discrimination laws, employers are not required to accommodate an employee's use of medical marijuana." Said another way, employers can implement and consistently enforce their zero tolerance drug policy, even if an applicant or employee is a medical marijuana cardholder.

Before this decision, the law required that employers accommodate an employee's use of medical marijuana under state disability laws. That meant that, in most cases, an employer would have to disregard an employee's positive drug test results when the employee had a medical marijuana card, and evaluate whether the off-duty drug use could be accommodated.

The Oregon Supreme Court's decision held that although medical marijuana is not an illegal drug under state statutes, it is still an illegal drug under federal law. Because marijuana is illegal under federal law, employers cannot be forced to accommodate the use of an illegal substance because state disability discrimination law specifically state that illegal drug users are not protected.

With this new decision – and a bevy of other new statutes and regulations that are outside the scope of this article – it is a good time to brush off your personnel manuals and update your drug testing policies. If you previously updated your policy to address medical marijuana use, you should revise your policy again. If your policy is not updated to account for this change in the law, your organization may be committing to accommodate employees that use medical marijuana beyond the requirements of existing law.

If you have questions about this article, or would like to have your drug testing policy revised or updated, please contact David Briggs at (503) 399-1070 or dbriggs@sglaw.com or another member of the firm's Employment Law Group.