

Arkansas Medical Marijuana Update and Impacts on Businesses: July 16 Arkansas Environmental Federation Presentation



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My law firm colleague, Nate Read, and I undertook a presentation at the Arkansas Environmental Federation Health and Safety Seminar titled:

Medical Marijuana Update and Impacts to Businesses ("Presentation")

The *Presentation* was undertaken at the Arkansas Electric Cooperative Corporation headquarters in Little Rock, Arkansas.

The focus of the *Presentation* was Arkansas's decriminalization of marijuana use for medicinal purposes for qualified patients and the potential issues that must be addressed by Arkansas employers. This was deemed especially relevant to facilities with complex processes and activities (including those related to environmental health and safety).

The *Presentation* addressed:

- Decriminalization (from a state [Arkansas] standpoint) certain use of marijuana
- Establishment of regulation of cultivators and dispensaries
- No requirement for "Employer to accommodate the ingestion of marijuana in a workplace or an employee working under the influence of marijuana"
- Outline of process pursuant to which an individual can become a "Qualifying Patient" who can use medical marijuana

The 55-slide *Presentation* addressed in general:

- Marijuana's Continued Illegality at the Federal Level
- Arkansas's Passage of the Arkansas Medical Marijuana Amendment
- Cultivation and Dispensary Facilities Operational Status
- Distribution of Registration Cards by the Arkansas Department Of Health
- Other Laws Relevant to Arkansas Medical Marijuana such as:
 - American Disabilities Act
 - Federal Drug Free Workplace Act of 1988
 - State Workers' Compensation laws
 - Federal Department of Transportation Regulations
- Arkansas Amendment Requirements for Qualifying Medical Conditions
- Steps to Obtain a Qualification Card

- Arkansas Amendment Non-Discrimination Provision (addressing job applicants and employees producing a medical marijuana registry ID)
- Reminder that No Employee has a Right to Ingest or be Under the Influence of Marijuana at the Workplace
- Systemic Marijuana Side Effects
- Unique Properties of Marijuana
- Continuing Importance of Safety in the Workplace
- Employer Issues
- Cost of Drug-Testing Applicants
- Increased Management Training Costs
- Increased Need for Supervision, Oversight
- Key Questions Faced by Arkansas Employers
- Do employers continue to enforce their traditional substance-abuse policies, or adopt a new approach for dealing with employees who test positive for marijuana in the workplace?
- Does the Americans with Disabilities Act (ADA) protect employees who claim discrimination based upon their use of marijuana for a disabling medical condition?
- Do employers violate the Occupational Safety and Health Administration's (OSHA's) General Duty Clause by allowing employees who use marijuana to perform safety-sensitive jobs, and thereby create a workplace hazard that OSHA standards seek to eliminate? (irrelevant fun fact – note use of drones by OSHA and LA DEQ)
- Do the Department of Transportation's (DOT's) substance-abuse regulations trump state marijuana laws?
- Heightened level of concern when claimant returns to a safety-sensitive occupation, such as driving or construction, while subject to potential adverse cognitive and psychological effects of marijuana?
- Quantification of the amount of marijuana consumed by claimant is not available through urine medication testing, thereby limiting ability to determine if he or she has consumed prescribed dose, or is in fact acutely intoxicated
- Can an employer ban the use of marijuana by an employee if it is permitted by state law - and if the employee has a prescription?
- Does an employer have the right to terminate an employee who tests positive for marijuana, even if the employee shows no signs of impairment on the job?
- Employees Shown to be "Impaired" on the Job may be Disciplined and Discharged by an Employer
- Federal Government Contractors/Grantees Subject to the Drug Free Workplace Act of 1988 Should Continue to Follow All of the Requirements of the Act, Even in States Permitting Marijuana Use by Employees
- Employers Subject to Department of Transportation Hazmat Rules Must Recognize the Continued Ban of Marijuana Use
- Create Written Job Descriptions which Designate Safety Sensitive Positions within your Organization?
- Review and Update Your Employee Handbooks, and Drug Testing Policies and Practices?
- Possible Employer Drug Policies
- Training Managers and Supervisors to Identify Employees Under the Influence with a Good Faith Belief Sufficient to Support the Administration of a Drug Test
- "Good Faith Belief" means reasonable reliance on fact and can be based on observed conduct, behavior or appearance, information reported by a person believed to be reliable, or written, electronic or verbal statements from the employee or other persons
- American with Disabilities ("ADA") Act Issues
- ADA Accommodation Issues
- Loss of Insurance Coverage Issues
- Health Coverage Issues
- Impact on Workers' Comp

- Confidentiality Concerns
- U.S. Department of Transportation Preemption of State Medical Marijuana Laws
- Occupation Safety and Health Administration
- General Duty Clause
- OSHA-Post-Accident Drug Testing
- Family and Medical Leave Act
- Additional Liability Risks for Employers
- Physical Injuries to User or Others

A copy of the slides can be downloaded [here](#).