

Substance abuse in the workplace

Legalization of marijuana requires employers update policies and procedures

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Substance abuse negatively affects employers through lost productivity, absenteeism, low morale, higher turnover, increased accidents and increased health costs. The Working Partners Report, a study sponsored by the U.S. Department of Labor, and the SBA, and Office of National Drug Policy Control, estimates that 38 percent to 50 percent of all workers compensation claims are related to substance abuse, and substance abusers file three to five times more workers compensation claims than the average employee. The White House's Office of National Drug Control Policy estimates that U.S. companies lose billions of dollars each year due to substance abuse issues.

Despite these statistics, over the last few years, 23 states, including Massachusetts, Connecticut, Rhode Island, Maine and Vermont, have authorized or decriminalized medicinal use of marijuana, and four states have legalized its recreational use. With the changing landscape of the law, now is the time for employers to update and implement a comprehensive workplace substance abuse policy.



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Use of marijuana can be banned from the workplace

While state laws vary on the use of marijuana, currently all states allow employees to prohibit drug use in the workplace. Just like alcohol use, employers are entitled to prohibit employees from working under the influence of marijuana, even if it is being used for medicinal purposes.

However, caution must be applied in some states. For example, Connecticut, Maine and Rhode Island have laws that specifically prohibit discrimination against workers based solely on their status of being a medical marijuana user. Conversely, the Massachusetts implementation regulations explicitly state that employers are not required to offer "accommodations of any on-site medical use of marijuana in any place of employment." Further, many states have differing laws regarding the testing of employees for drug and alcohol use. Therefore, employers, especially those with multistate operations, will have a challenging time navigating the many inconsistencies between federal and state laws without a comprehensive substance abuse policy.

Many employers do not have a substance abuse policy or the policy they have is out of date. Without a comprehensive substance abuse policy, employers remain open to accidents, absenteeism, and other costs associated with drug and alcohol abuse. More importantly, the failure to implement an effective policy will likely cre-



ate fertile ground for employee litigation. Accordingly, it is imperative for employers to implement an effective policy that resolves employee substance abuse problems.

Tips to implement a substance abuse policy

Here are some best practices on how to develop an effective substance abuse policy:

Put it in writing: As with all policies, employers should create a written substance abuse policy and every employee should sign an acknowledgement that they have read the policy. This policy should also be incorporated into the employee handbook for ease of distribution to new employees.

Provide training: Ensure that all supervisors are trained on the policy and how to detect and respond to workplace drug and alcohol abuse.

Set clear rules and penalties: Clearly set forth the policy and the penalties for violations. The policy should clearly define who is covered and when the policy applies.

Provide a way for employees to seek help:

Offering an employee assistance program is an effective prevention tool and gives employees a way to seek treatment for substance abuse before it becomes a problem in the workplace.

Drug Testing: Verify whether drug testing is permitted in your state and under what circumstances. If your poli-



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cy includes a drug testing program, state who will be tested, when they will be tested and what will happen in the event of a violation.

Document employee performance:

Maintain detailed and objective records on the performance of all employees. This will help prevent claims that discipline was based on a protected status, including being a medical marijuana user or perceived substance abuser.

Don't rush to judgment: Do not discipline employees based simply on the employee's appearance of being impaired. If drug testing is a part of your workplace policy, obtain a verified test result before taking action.

Protect privacy: Discuss all issues related to the employee in private. Never confront or accuse an employee in public or in front of co-workers. Have a second party (another manager or an HR representative) present to act as a witness.

Consult with an employment attorney:

Consult with an attorney before implementing or changing a substance abuse policy to ensure that it conforms to the laws of the given state where the employees work.

The legalization/decriminalization of marijuana will have a major impact on substance abuse in the workplace. All employers should take a close look at their policies to ensure compliance with the laws and regulations applicable to the state(s) where they are operating, be aware of any changing laws and regulations and update the policy as needed.