



Marijuana decriminalization sparks confusion in Md. workplaces

By: Heather Cobun Daily Record Legal Affairs Writer June 14, 2019



A security guard at Allegany Medical Marijuana Dispensary in Cumberland waits for people to arrive. (Washington Post/Ricky Carioti)

OCEAN CITY — The rapidly changing landscape of marijuana decriminalization has caused “mass confusion” and legal issues in Maryland workplaces, requiring employers and employees to be aware of ongoing developments, lawyers said Friday at a panel discussion at the Maryland State Bar Association’s Legal Summit and Annual Meeting.

The Labor and Employment Section of the MSBA discussed federal and state laws affecting drug testing and accommodations for individuals who use medical marijuana.

Marijuana is not “prescribed” in Maryland because it is still classified federally as a Schedule I substance, according to Garrett Wozniak, of Kollman & Saucier P.A. in Timonium. Drug testing is neither required nor

prohibited but, if conducted, must be done through a state-approved lab and follow certain procedures.

As the law develops, Wozniak said, employers need to be consistent and reasonable.

“There’s got to be some common sense here,” he said. “I don’t know why everybody’s so scared. ... We’re not in the 1950s with reefer madness anymore.”

Maryland has no express protections for medical marijuana users and employers are still permitted to test for marijuana use and can make hiring and firing decisions based on test results, according to Annapolis attorney Joyce Smithey.

“There’s a lot that hasn’t been developed in Maryland,” she said.

Some other states that have decriminalized or even legalized marijuana have legislative provisions to prevent employers from taking adverse action against employees for marijuana use, according to Smithey, of Smithey Law Group LLC.

There is no Maryland case law yet alleging disability discrimination based on termination for medical marijuana use, Smithey said, adding that the law will likely need to change for challenges to be successful.

“Until Maryland does something like that legislatively, it’s going to be an uphill climb to get one of those cases through,” she said.

States that have decriminalized marijuana are grappling with what, if any, protections exist for employers and employees, according to Lindsey White, of Shawe Rosenthal LLP in Baltimore.

In 2017, a Massachusetts court held that off-site use of medical marijuana could be a reasonable accommodation if it is not an undue hardship on a business, White said. A Connecticut court that year ruled employers cannot use the fact that a drug is illegal under federal law to terminate an employee unless a federal requirement is imposed.

White said she advises clients to tread carefully and to use caution.

“As an employer, you don’t want to be the test case for this,” she said.


Despite the federal government’s stance on marijuana, the Americans with Disabilities Act could still be relevant, according to White.

“The landscape has changed dramatically,” she said of developments in recent years, noting that while drug use is not protected, the underlying disability that led a person to acquire a medical marijuana card may be relevant. Diseases such as multiple sclerosis, HIV/AIDS and cancer can qualify an employee for accommodations.

“Their disability is not their status as an illegal drug user,” she said.

Glendora Hughes, general counsel at the Maryland Commission on Civil Rights, said employers must be consistent and measured when sanctioning employees.

“If you’re going to terminate one, you’ve (also) got to terminate in a similar situation,” she said.

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