

## Hazy Marijuana Policies Endanger Employers, Workers

By Holly Culhane, Contributing Columnist



It's not surprising that businesses and their employees are in a bit of a haze over recent legislative and voter-approved moves to legalize marijuana use.

About 20 states, including California, have legalized the use of marijuana for medicinal purposes. And in 2012, voters in Colorado and Washington went a step further by legalizing "recreational" use, as well.

These actions place states in conflict with federal laws, which still regard marijuana as an illegal drug. They also created confusion in the workplace, including in Kern County.

An increasing number of local business owners and managers are asking: Can we still enforce zero-tolerance drug policies and require a drug-free workplace? Like other human resources specialists, I answer, yes.

But there is no doubt that lawsuits challenging these drug policies are looming and employers must proceed cautiously.

Some states have not addressed workplace issues regarding marijuana. But in other states, including California, laws and court rulings support an employer's right – and even obligation – to prohibit use or possession of marijuana in the workplace. It is the use of marijuana outside the workplace that has some employers perplexed.

Just like policies regarding the use of alcohol and legally prescribed drugs, showing up to work "under the influence" of marijuana can and should be prohibited. Impaired workers pose a danger to themselves, their colleagues and often the public.

The Occupational Safety and Health Act's "general duty clause" requires employers to maintain safe workplaces. In the course of investigating workplace accidents, OSHA frequently has issued citations to employers who had workers with illegal drugs in their systems.

The difference between being "impaired" and an employee showing up for work with the presence of marijuana in his or her system – residual amounts from medical treatments, or in some states, recreational use – will be increasingly vulnerable to future court challenges.

Further complicating matters for employers are federal requirements that are often tied to services or product sales that require contractors to maintain drug-free workplaces that are in compliance with federal laws.

I offer the following advice to employers squeezed between the rock of more lenient state laws and the hard place of an unyielding federal position that marijuana use and possession is illegal.

- Review your company's written substance abuse policies. If you do not have written policies, hire a specialist in this area to create them. Policy wording must remove confusion. For example, a policy should not make a general reference to "illegal drugs." Rather it should ban drugs considered to be "illegal under federal and state laws." Go the next step and state that it includes marijuana.
- If you have customers, such as the federal government, that require contractors to maintain drug-free workplaces, include that in the policy.
- Specify what a "drug-free" workplace means to employees. No doubt that will prohibit employees from showing up for work "under the influence." Likely it will also mean having drugs, including marijuana, in a worker's system.
- State when employees will be drug tested. Most companies require drug testing of applicants prior to employment. When will drug testing be done after employment begins? Will that be following an on-the-job accident? What will be the consequences? Will the consequences be applied to both "impairment" and "presence" of a drug in a worker's system?
- Communicate the company's drug policy, including its treatment of marijuana, to workers and managers. If employers are confused, imagine what workers are thinking.

The most important advice I give to employers in these litigious times is to develop and enforce drug policies with the help of specialists and attorneys. Drug-free workplace policies and enforcement must comply with state and federal laws.

***This article written by Holly Culhane first appeared online and in The Bakersfield Californian on April 22, 2014. Holly Culhane is president of the Bakersfield-based human resources consulting firm P.A.S. Associates. She can be contacted through her website [www.pasassociates.com](http://www.pasassociates.com) and through the [PAS Facebook](#) page or by phone at 631-2165.***

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