

Tread carefully: Prop. 64 creates workplace minefield

By Holly Culhane
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The dust is still settling and Californians are trying to figure out how this sometimes crazy 2016 election will affect them. This is especially true regarding the passage of Proposition 64, which legalizes the recreational use of marijuana.

Since 1996 and voters' passage of Proposition 215, the use of marijuana has been legal in California for medicinal purposes. And just this year, the Legislature passed and Gov. Brown signed a law establishing licensing, fees and other controls over growing and distributing medical marijuana.

But before those new regulations could be enacted, California voters on Nov. 8 overwhelmingly passed Proposition 64, making California the epicenter of a nationwide move to legalize marijuana.

California is not the first state to take this step. Colorado, for example, now is "test driving" some of the marijuana growing pains that await California. But legalization in California is expected to skyrocket the state's annual marijuana sales to \$6.5 billion by 2020. Last year, California's medicinal marijuana sales alone were about \$2.8 billion, accounting for nearly half of the nation's total legal marijuana, or cannabis sales, including sales in states that had recently legalized recreational use.

The California marijuana market is huge and so are the social and work-related questions looming over Proposition 64's passage.

But before people start lighting up or otherwise ingesting cannabis, which federal law still regards as a prohibited controlled substance, employers and employees need to be aware of the effects of marijuana use on the workplace.

This was not the first time Californians were asked to legalize the recreational use of marijuana. As recently as 2010, when proponents placed Proposition 19 on the ballot, California voters rejected the idea.

According to a post-election analysis by the California Chamber of Commerce, the big difference between the failed Proposition 19 and the triumphant Proposition 64 was the earlier ballot measure's workplace provisions. Proposition 19 protected employees who used marijuana from being disciplined or fired by employers who wanted to maintain a drug-free

workplace. It forced employers to prove an employee was impaired before discipline could be imposed.

The chamber notes that Proposition 64 contains no such employee protections and means that the status quo in drug- and alcohol-free workplaces can be maintained. While this conclusion will likely be subjected to future state rule-making, court challenges and legal interpretation, the chamber contends employer policies relating to pre-employment drug testing, drug testing after events, such as on-the-job accidents, and prohibitions on possession and use of marijuana in the workplace can remain the same.

I will leave the detailed legal interpretation of Proposition 64 to the regulation-writers, lawyers and controlled substance specialists. But we cannot ignore the fact that legalization of the recreational use of marijuana in California requires employers and employees to exercise great caution.

Maintaining a drug-free workplace is a requirement to contract with the federal government. For a whole range of other reasons, including legal ones, it also is a prudent policy for all companies to maintain.

Working with controlled substance testing experts and attorneys, now is the time for companies to carefully review their drug policies and consistently enforce them. Train supervisors regarding implementation. Communicate policies to employees and job-seekers.

In its analysis, the chamber noted Proposition 64 also left other prohibitions in place. These include smoking or ingesting marijuana in public places and where tobacco smoking is prohibited. These prohibitions apply to workplaces, public buildings, restaurants, etc. Driving under the influence of marijuana also remains illegal.

While some Californians may be celebrating the new glow of recreational marijuana use being legalized, passage of Proposition 64 did not create a hazy new Wild West.

Employers and employees are advised to tread carefully through this minefield.

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