

Legalization of Marijuana

What Every Human Resources Professional Should Know...so Far: A Primer

Fox Valley SHRM Association



The Law

ILLINOIS BECOMES 11TH STATE TO LEGALIZE RECREATIONAL MARIJUANA

- The Land of Lincoln is the first state to legalize recreational marijuana via the legislative process rather than a ballot initiative.
- House Bill 1438, which will make legal statewide the consumption of marijuana for nonmedicinal purposes. Legal sales will begin Jan. 1, 2020.

The Law

ILLINOIS BECOMES 11TH STATE TO LEGALIZE RECREATIONAL MARIJUANA

- Adults aged 21 and older to possess up to 30 grams of marijuana. Those using marijuana for medical purposes would be allowed grow marijuana at home, although recreational users are still prohibited from home growing.
- It will be legal to smoke in one's own home and on-site in some cannabis-related businesses.

The Law

Use is prohibited in:

- Any public place, such as streets or parks
- In any motor vehicle
- On school grounds, with the exception of medical users
- Near someone under the age of 21
- Near an on-duty school bus driver, police officer, firefighter or corrections officer
- Any person, business or landlord can prohibit use on private property. Illinois colleges and universities will also be allowed to ban marijuana use.

What Will Legal Marijuana Cost Employers?



National Families in Action
Atlanta, Georgia



Employers' litigation costs will rise as case law is established

Current questions being litigated:

Can employers fire an employee for engaging in legal activities off the clock?

Does firing an employee who tests positive for marijuana violate anti-discrimination laws?

Are employees who use marijuana off the clock impaired when they come to work?

Must employers cover medical marijuana costs for employees injured on the job?

Must employers pay unemployment compensation to employees fired for failing a drug test?



Will there be an adequate supply of qualified workers?

Potential Consequences

Fewer job applicants able to pass a pre-employment drug test

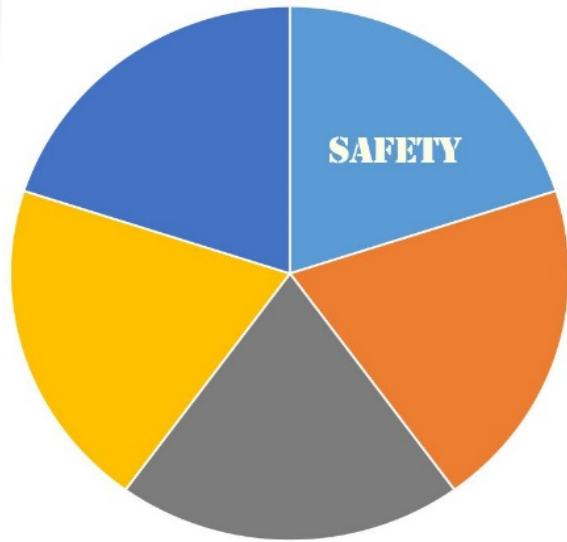
Reduced motivation among mj using employees

Increased accidents, injuries, absenteeism

Increased addiction

Impact on brain development, memory, lowered IQ means diminished ability to learn

Increased liability and health insurance costs



Workplace safety threatened

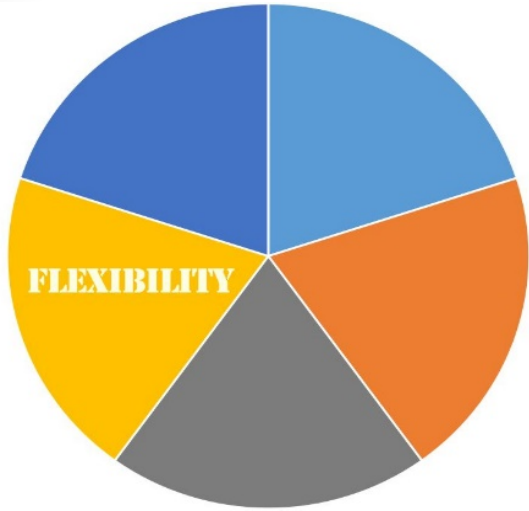
Relevant issues

Will employers be able to maintain a drug-free workplace?

How can employers ensure safety if they must show *impairment* rather than the presence of marijuana in the body?

Must employers required by DOT to drug-test workers in safety-sensitive jobs exempt those using medical marijuana?

Legalization advocates challenge drug-free workplace programs



Workplace flexibility imperiled

Potential loss of flexibility

Will employers be able to shift employees to different jobs in the company?

Will employees still be able to work from home?



How can employers with employees in multiple states comply with marijuana laws that differ from state to state – and with federal law?

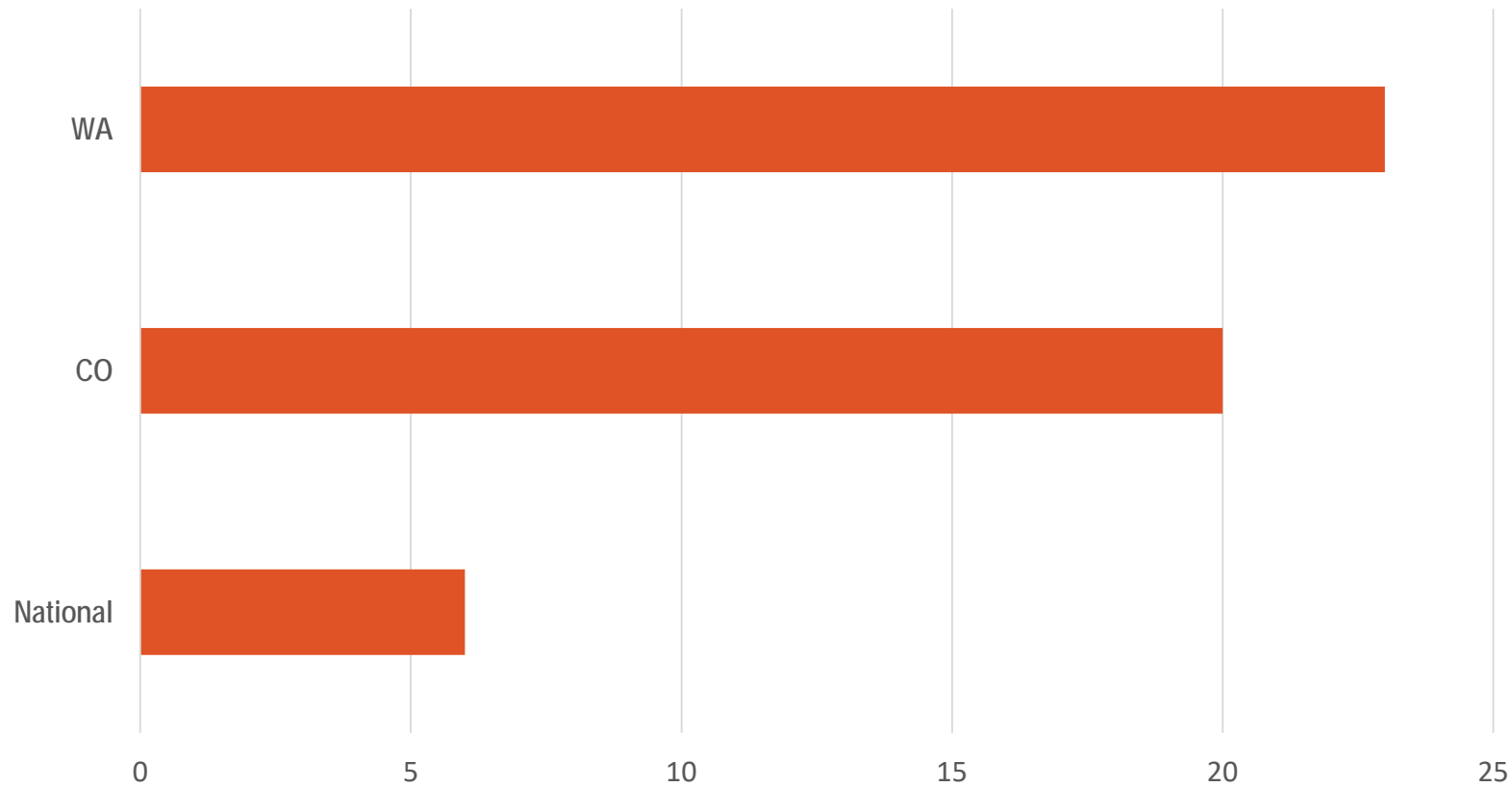
To what lengths do employers have to go to comply with marijuana-friendly laws vis-à-vis their employees?

Must employers allow employees to use medical marijuana on the job?

If employers with federal contracts do business in legal marijuana states, how can they comply with federal mandates to maintain drug-free workplaces?

Quest Diagnostics Drug Test Index™

Workplace Pos MJ Tests: Increase from 2012-2013



<http://www.questdiagnostics.com/home/physicians/health-trends/drug-testing>

Marijuana: a Primer

- Dozens of strains of marijuana
- Over last 20 years, marijuana potency – expressed as a percentage of THC by weight of substance – has increased from approx. 3% in 1980s to approx. 15% today
- THC can be detected in bloodstream days or weeks after ingestion

Marijuana & Impairment

- Testing can indicate ingestion within 4-6 hours, however no accepted test to assess or predict impairment
- Impairment affected by:
 - Strain and potency of marijuana
 - Physical characteristics of the user
 - Environmental surroundings
 - Frequency of use and method of consumption

Implications for Employers: The Duty to Accommodate

1. Requirement to ensure employees:
 - (a) are not impaired at work; and
 - (b) can perform their duties safely.
2. When and how does the duty to accommodate arise?

Implications for Employers: The Duty to Accommodate

1. Is the employee in a safety sensitive position?
2. Does the employee have a verified medical condition requiring medical marijuana? Or, is the employee using recreationally?

If there is a verified medical condition, the employer must examine if it can accommodate the employee's condition. Including, if that condition is addiction.

Implications for Employers:

While updates to drug and alcohol policies will be needed, the basic principles regarding impairment in the workplace continue-

e.g. Employees are not permitted to be impaired at work or pose a safety risk to their co-workers or the public, regardless of whether they have a prescription and regardless of whether marijuana is legal

Note: Anti-smoking laws will apply to marijuana the same way as regular cigarettes

Amendment 64 Employer Clause



"Nothing in this section is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies **restricting** the use of marijuana by employees."

Employer's Rights



Have a sound drug policy in place

Zero-tolerance of impairment is absolutely allowable & enforceable

Communicate expectations/outcomes with all employees

Keep signature pages for documentation

Consistently enforce policies with clarity

No “case-by-case” basis

Employer's Rights



Pre-Employment, Post-Accident, Random & Reasonable-Cause testing are all permissible and encouraged

- **All supervisors should be trained in detecting signs & symptoms**
- **Never call a Reasonable Cause test a “random”**

Drug and Alcohol Policies

- Currently, most drug and alcohol policies lump marijuana together with the prohibited use of other illegal and illicit drugs
- Once legalization occurs, the legal use of marijuana will have to be treated in a similar manner to rules around alcohol consumption
- Zero tolerance no longer justifiable vis a vis medical marijuana (i.e. pre-employment drug screening)
- Zero tolerance no longer justifiable vis a vis recreational marijuana

Drug and Alcohol Policies

Use of medical marijuana to treat medical conditions must be treated in a similar manner to other prescription drugs that can cause impairment – including requirement to:

- Employee duty to report use/prescription of such medically prescribed drugs, and
- provide medical information on disability and type/amount/frequency of marijuana prescribed

Practical Considerations

- Avoid decisions based either on stigma around marijuana or on assumptions about the use of marijuana and its impact on employees' ability to do their jobs
- Like all employees with disabilities, the focus should be on whether the use of medical marijuana impairs the ability of the employee to perform the job
- Ensure relevant drug policies are updated and sufficiently address new marijuana reality

Practical Considerations

- Until tests are readily available to address impairment versus in-the-system, consider re-testing candidates/employees two-weeks later.
 - Of course, not having them work during this review time could be a strong risk-management approach.

Practical Considerations

- Act on concerns immediately and conduct fair, thorough, and impartial investigations
- Know what a patient requires to be legally authorized to possess medical marijuana
- Beware of the self-prescribing employee
- Don't be afraid to question the simple prescription

Practical Considerations

- Have medical service provider confirm:
 - Employee suffering from disability (and doctor treating them for same)
 - No other remedies/medication that is non-impairing that can be used instead of cannabis
 - Ask doctor what dosage/day required form ingestion/frequency per day
 - Ensure doctor understands employee's job duties

Practical Considerations

Train supervisors on how to recognize signs of marijuana impairment:

- Euphoric/increased sense of well being
- Lack of motivation
- Lowered inhibitions, talkativeness
- Dry mouth and throat
- Increased appetite/munchies
- Impaired coordination, concentration and memory
- Increased heart rate

Act quickly in cases of suspected impairment

EMPLOYER CHALLENGES



EMPLOYER CHALLENGES



EMPLOYER RESPONSIBILITIES



Safe and Drug-Free Workplace

Protect employees, customers,
work-environment and the public

Get involved in Protecting Employer's Rights

“Alcohol is legal, but you still can’t drink it in your office and expect to remain employed with us.”

Senior Executive for Media Company

Questions?

- Thank you!

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Kindness is the bottom line.