

TOP 10 REMINDERS REGARDING MEDICAL MARIJUANA IN OHIO'S WORKPLACES

REMINDER #1: Marijuana use and possession, whether medical or recreational, still remains illegal under federal law.

Vorys Tip: It's uncertain what the federal government's enforcement position will be under the new administration. [Subscribe](#) to Vorys client alerts to stay abreast of any developments in this area.

REMINDER #2: Employers are not required to permit or accommodate an employee's use, possession, or distribution of medical marijuana in or out of the workplace.

Vorys Tip: An employer may choose to accommodate on- and/or off-duty medical marijuana use like any other accommodation, such as when the employer accommodates other medication use. Employers can always prohibit employees from working when impaired, regardless of a substance's legal or quasi-legal status. Employers should remind employees that they cannot come to work impaired by any substance, even medical marijuana.

REMINDER #3: Employers can discharge, refuse to hire, discipline, and take adverse employment actions against an individual because that individual uses medical marijuana.

Vorys Tip: Employers should apply workplace policies fairly and consistently, and, when doing so, be aware of potential discrimination claims. For example, while a medical marijuana use need not be accommodated, the employee may have an underlying disability that may need to be.

REMINDER #4: Employers can implement and enforce drug testing, drug-free workplace, and zero-tolerance policies.

Vorys Tip: Remember that drug testing doesn't measure actual on-the-job impairment when it comes to medical marijuana. Managers should be trained to identify signs of marijuana impairment, monitoring employee performance, being alert to performance issues, and enforcing the drug policy. Employers should also consider whether they can or should make exceptions to their drug policies for registered medical marijuana users. Overall, employers should be clear about drug-testing requirements and ensure that the requirements comply with a state's medical and/or recreational marijuana law.

REMINDER #5: Employees who are discharged for using medical marijuana may be ineligible for unemployment compensation benefits

Vorys Tip: To prevent such an employee from receiving unemployment, employers must have a policy prohibiting the use of medical marijuana.

REMINDER #6: Employees who are injured while under the influence of medical marijuana are ineligible for workers' compensation benefits if that use was the proximate cause of the injury.

Vorys Tip: As with any other drug-related injury, being under the influence of medical marijuana or refusing to take a drug test may lead to a rebuttable presumption that the drug caused the injury. And workers' compensation doesn't require that employers pay for medical marijuana.

REMINDER #7: Federal restrictions on employment are not affected by Ohio's Medical Marijuana Law.

Vorys Tip: Employers should determine whether any federal laws will restrict or prohibit medical marijuana use in their workplace. For example, OSHA's General Duty Clause requires employers to maintain safe workplaces, and impairment by any drug is a potentially avoidable workplace hazard. The federal Omnibus Transportation Employee Testing Act requires drug and alcohol testing of transportation employees in safety-sensitive positions in the aviation, trucking, railroad, mass transit, pipeline, and transportation industries. And the Drug-Free Workplace Act applies to federal contractors and grantees and requires drug-free workplaces as a condition of receiving federal funds.

REMINDER #8: Employees cannot sue an employer for discharging, disciplining, discriminating, retaliating, refusing to hire or otherwise taking an adverse employment action against them due to medical marijuana use.

Vorys Tip: Despite this statutory protection, employers should be cautious when taking adverse employment action against an employee who is a registered medical marijuana user. Employers should carefully consider whether doing so will lead to other claims.

REMINDER #9: Currently, twenty-eight states and the District of Columbia have enacted their own marijuana laws, each of which is different.

Vorys Tip: Employers operating in multiple jurisdictions should review their policies and practices to ensure compliance with each state's laws. There is no one-size-fits-all approach to a workplace medical (and/or recreational) marijuana policy.

REMINDER #10: Marijuana laws are a rapidly evolving amalgam of statutes, administrative regulations, and case law. And many employee situations involving marijuana use may need to be resolved on a case-by-case basis.

Vorys Tip: When in doubt, employers should consult their attorneys.

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