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Advisors to Boards of Directors and Management



***“Weeding”* Through the New 2018 Medical and Recreational Marijuana Use Laws**

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- ▶ On November 8, 2016, voters passed Proposition 19, a state ballot initiative that allowed certain recreational marijuana use. That initiative went into effect on January 1, 2018.
- ▶ Allows adults age 21 and over to ***legally purchase and consume marijuana in the state without the need for a doctor's medical referral card.***



- ▶ Adults 18-20 years of age still need a medical referral card to legally purchase marijuana in the state.
- ▶ The locations where marijuana use is ***prohibited*** include public places, places where smoking or vaping is prohibited, as well as ***workplaces that maintain a drug and alcohol-free environment.***





- ▶ The bill expressly states that the state government will: ***"Allow public and private employers to enact and enforce workplace policies pertaining to marijuana."***
- ▶ Marijuana ***remains an illegal Schedule I substance under federal law***, which employers must follow.

A 2014 survey in the journal *Drug and Alcohol Review* found one in 20 California adults had used medical cannabis.

**THAT WAS 4
YEARS AGO!**

- ▶ This ***potentially*** means that employers can still drug test their employees, may refuse to hire those who use marijuana, and may terminate employees who use marijuana (in the workplace or out) if it violates company policy.
- ▶ Based upon the stated language in the bill, as well as federal law, ***employers with drug and alcohol-free workplace policies may continue to maintain and enforce them in California.***

- ▶ This law ***does not*** make it legal to drive, operate machinery, or otherwise take part in dangerous activities while under the influence of marijuana.
- ▶ California ***has not*** yet adopted a standard measure for marijuana impairment analogous to blood alcohol testing.



- ▶ Currently, the tests for marijuana **detect THC** (the chemical compound found in cannabis responsible for a euphoric high) in a person's system from anywhere ***from 3 days to 3 months.***

- ▶ Employers face a dilemma ***if an employee legally consumes marijuana outside of work, is no longer "impaired", and then is involved in a workplace accident.***



Contains Marijuana. Keep out of the reach of children.



- ▶ According to the law as written, an employer can **terminate** that employee for violation of an **existing** drug-free policy.
- ▶ Given the nature of the debate and the publicity that legalization is receiving, it is reasonable to anticipate pushback and litigation from employees terminated in that type of scenario.

- ▶ Ancillary laws and standards will be developed by the state over the next few months that will direct employers how to deal with these new concerns a little more clearly.
- ▶ One looming major obstacle for California's legal marijuana boom is and will continue to be the federal government because cannabis sales are **still illegal on the federal level.**



So, what can you do?

All company leadership must:

- ▶ Prohibit the use, possession, sale, distribution or manufacture of drugs and drug paraphernalia at work
- ▶ Forbid employees from reporting to work while under the influence
- ▶ Reserve the right to conduct searches of workspaces upon reasonable suspicion
- ▶ Ensure compliance with applicable federal and state laws

All company leadership must: (con't.)

- ▶ Provide workplace education and outreach, and with a company Employee Assistance Program
- ▶ Require frequent team Leadership and Team training
- ▶ Provide Leadership and HR support
- ▶ Offer confidential access to peer recovery support
- ▶ Be consistent when testing and disciplining team members

One Last Point...



- ▶ A survey by the advocacy group **California NORML** found that ***one in ten*** respondents have lost a job because they tested positive for cannabis. Nearly ***one in five*** have been denied employment due to medical cannabis use, and almost half of respondents feared losing job opportunities because of cannabis discrimination.
- ▶ A National Law Review study from November 2017 concluded that **“federal laws are not intended to preempt or supersede state anti-discrimination laws”** and that **employers face an “increased risk of enforcing zero tolerance drug testing policies against certified medical marijuana users.”**