Marijuana and Your Workforce

By: Brett Holubeck

Are you prepared to deal with an employee that uses marijuana? How would you respond to employees that are high at work? Unfortunately, all employers must be prepared to address the use of marijuana in the workplace. One survey found that 1 out of every 10 workers has gone to work high. In addition, there are approximately 22.2 million American adults that used marijuana in the last month.

Currently the rules governing marijuana vary depending on the state (marijuana is still illegal at the federal level). Recreational marijuana is legal in 9 states and medical marijuana is legal in 30 states. There is no doubt more states will legalize marijuana for both recreational and medical use. More than 61% of Americans support legalizing marijuana. That support is up from just 31% in 2000.

What Do Employers Need to Know about Marijuana?

Here is some information from the National Institute on Drug Abuse, a United States government research institute, about the short-term effects of marijuana:

When a person smokes marijuana, THC quickly passes from the lungs into the bloodstream. The blood carries the chemical to the brain and other organs throughout the body. The body absorbs THC more slowly when the person eats or drinks it. In that case, they generally feel the effects after 30 minutes to 1 hour.

Marijuana overactivates parts of the brain that contain the highest number of these [brain] receptors. This causes the “high” that people feel. Other effects include: 1) altered senses (for example, seeing brighter colors); 2) altered sense of time; 3) changes in mood; 4) impaired body movement; 5) difficulty with thinking and problem-solving; 6) impaired memory; 7) hallucinations (when taken in high doses); 8) delusions (when taken in high doses); and 9) psychosis (when taken in high doses).

What Employers Must Consider

All employers must be aware of marijuana issues in the workplace. Unless you are Snoop Dog or doing a report for CNN on marijuana, your company needs a plan in place to address employees that use marijuana while they are working. Employers also must address off-duty use of marijuana to the extent that they can.

Here are some steps that all employers should consider to address marijuana use by employees:
• Create a drug-free workplace policy that addresses drug use and drug testing. The policy should prohibit the use or manufacture of illegal drugs at work. The policy should also establish when employees will be drug tested.

• Train your supervisors and managers to recognize the signs of drug impairment. Many sheriff’s departments and local law enforcement agencies will offer the training for free. Your workers’ compensation carrier may also offer the training at no cost to your company.

• Be aware of state law requirements especially as they relate to accommodating the off-duty use of marijuana. The Massachusetts Supreme Judicial Court held that an employer needs to engage in the interactive process under the Americans with Disabilities Act to determine if there were other possible accommodations for an employee that uses medical marijuana. Connecticut and Rhode Island recognize that a company that refuses to hire someone simply because the applicant is a medical marijuana user violates each state’s marijuana statute. All companies must be prepared for more states to adopt similar legislation and court rulings prohibiting companies from retaliating against employees for their off-duty marijuana use.

• Outline the essential job function of each company position to ensure that any employee that must be accommodated for off-duty marijuana use can meet all the requirements of the position.

• Do not forget to follow any special federal regulations that apply to any of your employees such as the Department of Transportation regulations for Commercial Drivers.

**Conclusion**

Marijuana is changing the workforce. As more and more people come to support legalizing marijuana (and more people use it), it will eventually be legalized. Once it is legalized, employers will probably refrain from penalizing people that use it off-duty so long as the person is not impaired or high when they come to work. The one obstacle from making it like off-duty use of alcohol is that there is currently no test that can measure marijuana impairment. Employers must continue to train their supervisors to recognize external signs of impairment until there is a reliable way to test whether someone is high on marijuana. Unfortunately, the issues surrounding marijuana and the workplace will continue to multiply for the foreseeable future.

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