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The Status of Legalized Medical Marijuana for Pennsylvania Employers

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On May 17, 2016, Pennsylvania's Medical Marijuana Act, Act 16, went into effect. The Department of Health ("DOH") has until November 17, 2016, to start publishing temporary regulations. Patients approved for marijuana use by the DOH will be given a medical cannabis registration card.

Qualifying Medical Conditions. The law approves treatment for Pennsylvania residents with a terminal illness or if he or she suffers from cancer, HIV/AIDS, amyotrophic lateral sclerosis, Parkinson's disease, multiple sclerosis, epilepsy, inflammatory bowel disease, neuropathies, Huntington's disease, Crohn's disease, post-traumatic stress disorder, intractable seizures, glaucoma, autism, sickle cell anemia, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, and severe chronic or intractable pain of neuropathic origin, or if conventional therapeutic intervention and opiate therapy is contraindicated or ineffective. Patients registered for medical cannabis in another state are not allowed access to medical cannabis in Pennsylvania.

***Health Insurance*.** Health insurers are not required to reimburse any costs involved with the use of medical cannabis.

Method of Ingestion. The only types of medical cannabis allowed initially are pills, oils, gels, creams, ointments, tinctures, liquid, and non-whole plant forms for administration through vaporization: no smoking or edibles are currently permitted.

***Legal Protections*.** A patient must be registered with the DOH in order to be legally protected from marijuana-related arrest, prosecution, or discrimination in child custody. Employers also may not discriminate against patients for their "status" as registered patients. These protections, however, are not absolute:

- Employers are not required to accommodate employees with respect to the property or premises, including for on-site use.
- Employers are not required to violate federal law (e.g. through federal contracting) to assist employees.
- Employers are entitled to maintain a safe workplace:

- Employees with more than 10 nanograms* per milliliter of THC in their blood in serum may not operate or be in physical control of (a) chemicals that require a federal or state permit, (b) a high-voltage electricity, or (c) other public utility.
- Employers may discipline employees for "being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position."
- Employers may prohibit employees from performing mining or any other "employment duties at heights or in confined spaces" while under the influence of marijuana.
- Employers may prohibit employees from performing any task which the employer deems life-threatening to the employee or other employees while under the influence of marijuana. In addition, "[t]he prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient."

Boiled down, the new state law *should* balance individual and employer rights fairly well. The law allows qualifying employees to self-administer marijuana and to be protected from discrimination solely because he or she has been granted a medical marijuana script. On the other hand, employers can still remove employees who pose a danger to themselves or others and have no obligation to accommodate employees who are seeking to medicate at work. The immediate question we see, and we'll have to wait for the answer, is whether employers will be obligated to accommodate, under the PRHA, qualified employees who self-medicate outside of work. Ideally, the regulations will clarify exactly what is expected of employers, but, of course, we will have to wait and see.