The 411 on 420:
How to Navigate Your Way Through the Realities of Medical Marijuana in the Workplace
**Table of Contents**

Medical Marijuana in the Workplace 3

Understanding State Laws and the Use of Medical Marijuana 7

Complexities of Medical Marijuana and What You Can Do About It 10

Seeing the Forest Through the Weed 14
Medical Marijuana in the Workplace

More than two decades ago, Californians went to the polls to cast their vote on the Compassionate Use Act of 1996. In voting for Proposition 215, as it’s more commonly known, they paved the way for California to become the first state in the nation to legalize marijuana for medicinal purposes.

Now, more than 20 years later, medical marijuana is legal in 29 states across the country. Not only that, a growing number of states are also working to legalize its use for recreational purposes. In fact, following the November 2016 elections, in which California, Massachusetts, Maine, and Nevada all approved ballot initiatives, recreational marijuana is now legal in a total of eight states as well as the District of Columbia. And, more states are expected to follow suit in the months and years ahead.
While it’s unclear how things will play out politically, this national trend toward legalizing marijuana reflects a shifting mindset among the general public. According to a recent CBS News poll, for example, 61 percent of Americans believe that marijuana should be legal. Not only that, 71 percent believe that the federal government shouldn’t interfere with states’ rights as it relates to marijuana. Perhaps most telling of all is the fact that a staggering 88 percent of Americans now favor medicinal marijuana.

At the same time, marijuana is also becoming much more accessible. A case in point is the small town of Parachute, Colorado, which recently made headlines for opening The Tumbleweed Express Drive-Thru, the nation’s first drive-through marijuana dispensary. And, with dozens of legitimate, publicly traded and private marijuana businesses popping up around the country, it’s not hard to imagine reaching a point where marijuana is readily available to anyone who wants or needs it.

*Jennifer De Pinto, Fred Backus, Kabir Khanna, and Anthony Salvanto

For today’s employers, the evolving legal landscape around these issues presents an array of challenges. That’s because although a growing number of states have already legalized marijuana, at the federal level the law is clear, albeit not particularly well enforced. Thanks to The Controlled Substances Act of 1970, marijuana remains an illegal substance.

Practically speaking what this means is that in many jurisdictions state and federal laws are now in direct conflict with each other. The Drug-Free Workplace Act of 1988 and various state workers’ compensation laws complicate things even more, further blurring the lines between what’s legal and what isn’t, and putting companies like yours in a precarious position.

As an employer, you have a responsibility to follow the letter of the law, though which set of laws that is remains unclear. At the same time, you’re also responsible for protecting your business and the health and safety of your employees while they’re on the job. Unfortunately, when it comes to marijuana, reconciling all of these different considerations is anything but straightforward.
As the laws continue to evolve, you need to carefully consider how marijuana’s legal status in your state, or elsewhere, could potentially impact your workplace. For example, you need to ask yourself questions like:

- Do you need to be able to accommodate medical marijuana?
- What do you do if your employee has a prescription for medical marijuana but works in a high-risk occupation?
- What recourse, if any, do you have if you discover that your employee is impaired on the job as a result of legally consuming marijuana for medicinal purposes?

Getting this stuff right is critically important. If you don’t, you’re not only potentially at risk of putting your employees in harm’s way, but also of being subjected to a barrage of failure-to-hire, negligent-hire, and wrongful-termination claims. In the pages that follow, we’ll take a closer look at medical marijuana, the many considerations that come with it, and how you can best navigate your way through this challenging issue.
Understanding State Laws & the Use of Medical Marijuana

For the millions of Americans who use it, there’s no denying that medical marijuana has a variety of important benefits. It’s used to help treat everything from pain, nausea, muscular spasticity, and migraine headaches, to serious illnesses such as glaucoma, Parkinson’s disease, Huntington’s disease, and AIDS.

As an employer, you may very well have employees who are either currently using, or who would like to use, medical marijuana to improve their quality of life. Unfortunately, no matter whether you’re for or against it, that could put you in a tough position. That’s because the laws around its usage actually differ in both major and highly nuanced ways from state to state, with major implications for what you can and cannot do.
Just consider the following, for example:

- Some states decriminalize marijuana’s use and provide protection from state law criminal prosecution. Others decriminalize its use and provide employment protections. In Pennsylvania, Arizona, Delaware, and Montana, for example, it’s illegal to either penalize or terminate employees for using marijuana.

- Most states allow access to medical marijuana if a person has a registration or ID card that permits them to seek authorization from a doctor and then obtain, use, and possibly grow marijuana for medicinal purposes.

- Although some states prohibit discrimination against individuals on the basis of their being registered medical marijuana cardholders, most prohibit any use of marijuana in the workplace, or on the employers’ premises, as well as any on-the-job intoxication.
And it’s not just your own state laws that you need to worry about. If your offices are close to another state and you have employees traveling across state lines for either professional or personal reasons, you need to be familiar with the laws that are in place there too. Otherwise, what happens if you have employees who commute from states where medical marijuana is legal but you operate in one where it’s not?

The bottom line is that you need to take the time to understand the rules and regulations that apply to you and your employees across all of the locations where you have a presence.
Complexities of Medical Marijuana & What You Can Do About It

A lot of companies underestimate just how big of a challenge dealing with medical marijuana can be. They make the mistake of thinking that if they simply change their drug testing policy they’ll be all right. In reality, however, the issue is much further reaching than that and has the potential to bleed into a variety of other areas. These include everything from your policies and procedures to your employee assistance programs, family leave, and, most important of all, workplace safety.
To illustrate the point, consider these scenarios:

- If you operate in a state that allows medical marijuana under the law, but your company’s policies forbid it, you have to consider whether or not your employees will be eligible for unemployment insurance if you decide to terminate them as a result.

- Depending on your state, possession of medical marijuana could be considered a misdemeanor or a felony. How are you going to deal with this reality when it comes to conducting background checks?

- Regardless of what state you’re in, if you employ government contractors or are subject to Department of Transportation regulations, your employees have to be drug free with no exceptions. How are you going to reconcile that with the laws in your state?
As an employer, these are just a few of the issues that you need to be considering to protect your employees and your company. While there’s no one-size-fits-all solution for everyone, there is some general advice that you should keep in mind while figuring out how best to proceed. Specifically, it’s important to:

1. **Take all requests seriously.** Under the Americans with Disabilities Act, employers must reasonably accommodate employees. And while state and federal courts have never required employers to accommodate the use of medical marijuana, the fact remains that it’s a prescribed medication. As such, you need to take any request for accommodation seriously and figure out what approach is best for your organization.

2. **Don’t stigmatize medical marijuana.** Medical marijuana may be unique, but you should treat it as you would any other prescription drug that has the ability to impair employees’ ability to perform their duties and responsibilities. For that reason, don’t separate it out. Instead, include it in a blanket policy around prescription drugs and their potential to impact employee performance.

3. **Remember that your employees don’t have the right to be impaired at work.** Just because your employees may have the right to use medical marijuana, that doesn’t entitle them to be impaired while on the job or while performing their duties. Employees must be able to perform their job to meet your organization’s expectations. It’s important to communicate those expectations as well as what the consequences will be if they aren’t met.

4. **Identify safety sensitive roles.** When it comes to safety, not all roles are created equally. If you employ people in aviation, or people who operate heavy machinery, for example, then you have the potential to be putting that person and others at risk if they are impaired on the job. Understand which roles present the greatest risk in your organization as this isn’t always adequately spelled out in the law.
5. **Make offers of employment conditional.** Clearly state in your offer letters what your company’s policies and expectations are for anyone who wants to join your organization. The idea is to reinforce that employees must be willing to comply with your policies to gain employment.

6. **Over-communicate your company’s expectations.** Make sure that all of your employees are fully aware of your company’s position on drug and alcohol abuse, fitness-for-work, medical marijuana, and testing. It’s not something that you can remind your employees of too often so make sure that you build it into your regular communications.

7. **Train your employees and supervisors.** Provide training to your employees on what it means to be unfit-for-work and make it clear to them what the consequences will be if they’re ever found to be in that state. In addition, make sure to train your managers to recognize signs and behaviors (dilated pupils, slurred speech, incoherent trains of thought, among others) indicative of an employee who is unfit-for-work, and how to respond appropriately if and when the situation arises.

8. **Update your policies.** Focus on things like defining what constitutes acceptable use of prescription and non-prescription medications, your expectations regarding marijuana use at work events, and even during non-working hours or when employees aren’t on company property. You should also document when and how you’ll initiate drug-testing procedures and what the consequences of a positive test result will be.

By taking these steps, your company will be in a better position to deal with whatever comes your way. Ultimately, however, the most important thing to do is make sure that you’re well-informed about the legal status of marijuana in the states that are relevant to your business.
Seeing the Forest Through the Weed

As marijuana becomes increasingly mainstream, it’s quickly evolving into an important issue that employers need to be prepared to deal with. The best thing that you can do is to make sure that you’re well informed and that you see the big picture.

Don’t get caught in a situation where you’re either uninformed or unprepared. Instead, take the time to conduct a thorough analysis of what’s going on in your state and make sure to familiarize yourself with federal laws. Then update your processes and procedures accordingly and proactively communicate your position with your employees. You may also want to seek legal council to help guide you through this process.

No matter what you’re stance on medical marijuana may be, remember that the best way to deal with it in your organization is to be well prepared.
Next Steps

TAKE YOUR INTERVIEWING TO NEW HEIGHTS BY:

1. Visiting: jazzhr.com

2. Checking out our blog: notes.jazzhr.com

3. Contacting us: hello@jazzhr.com (888-885-5299)

FOLLOW US ON SOCIAL MEDIA