

Implications of the Medical Marijuana Act on Employers

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On April 17, 2016, Governor Tom Wolf signed into law The Medical Marijuana Act (SB 3), legalizing medical marijuana for use by patients who suffer from qualifying conditions and who register with the state. The law goes into effect May 17, 2016, after which the Department of Health has six months to craft temporary regulations. Final rules likely will not be implemented until at least 2018.

The legal interplay between employer drug policies and state marijuana laws is still in flux, but certain features are well established. First, legal protections for medical marijuana users do not take effect until the patient has been issued a medical cannabis registration card. Second, employers need not accommodate employees' on-site use of marijuana. Case law in other jurisdictions where medical marijuana has been legal for some time suggests that termination for a positive drug test-even if an individual is permitted by state law to take marijuana-will not be considered discriminatory or against public policy.

Notwithstanding the above, the law will likely have an impact on drug policy enforcement. Marijuana can stay in an individual's system for several months, so an employee with a state-issued registration card may be entitled to unemployment benefits if he or she is terminated because of a positive drug test without other indications of intoxication while at work. Similarly, in any context where an employer bears the burden of proof in an employment termination-workers' compensation, labor arbitration-an employee with a registration card who is terminated for marijuana use outside of work may be entitled to benefits or reinstatement.

Employers should consider reviewing their drug policies and testing procedures periodically for compliance with state and federal law. While The Medical Marijuana Act does not necessarily require revision of drug policies, employers will want to be careful about enforcement where marijuana is at issue.

For assistance with medical marijuana-related employment law issues, please contact a member of Barley Snyder's Employment Law Group.

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Joshua L. Schwartz

Partner

Tel: (717) 399-1535

Email: jschwartz@barley.com