

RETAILERS CAN MAINTAIN DRUG FREE WORKPLACE DESPITE STATE LEGALIZATION OF MARIJUANA

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Many retailers wonder what effect, if any, legalization of recreational marijuana has on their ability to maintain a drug free workplace.

Recreational marijuana has been legalized in Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon and Washington. Marijuana still remains an illegal Schedule I substance under the federal Controlled Substances Act, and therefore still subject to prosecution under federal law.

Legalization of marijuana in the above states does not affect an employer's ability to enact and enforce workplace restrictions related to drug possession, use, impairment, and testing. For example, California's "Control, Regulate, and Tax Adult Use of Marijuana Act," commonly referred to as Proposition 64, contains express language specifying that it does not:

- affect the rights and obligations of public and private employers to maintain a drug and alcohol-free workplace;
- require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace;
- affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees; or
- prevent employers from complying with state or federal law. (Cal. Health & Safety Code § 11362.45.)

Employers also maintain the right to enforce workplace restrictions on medical marijuana. In 2008, the California Supreme Court held in *Ross v. RagingWire Telecommunications, Inc.* that an employer lawfully may enforce drug free workplace policies even if an employee uses the marijuana for medical purposes. Proposition 64, does not limit the scope of that California Supreme Court holding.

Given the potential for confusion, employers should remind employees of any drug free workplace policies that extend to marijuana, and inform them that, although recreational marijuana is no

longer prohibited under state law, it is still prohibited in the workplace.

MEET THE TEAM



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