

LAW OFFICE OF LORI A. GOLDSTEIN, LLC

CLIENT BULLETIN June 2014

Medical Marijuana and Your Workforce - Part I The New (2014) Illinois Compassionate Use of Medical Cannabis Pilot Program Act (MCPP)

Illinois and Minnesota are now among 22 states and D.C. with laws legalizing marijuana to some extent. While Colorado and Washington State have legalized marijuana for recreational use, the others permit medical marijuana. Employers and workers across the nation are facing new questions, including **how these laws affect the workplace, drug testing and policies, disability accommodations, and unemployment compensation. What does MCPP mean for Illinois employers?** How do employers deal with the contradiction between state laws and federal law which still makes marijuana use illegal? Learn more in my 3-part series (June, July and August 2014 Client Bulletins.)

MCPP – Basic Elements and Current Status

Illinois Gov. Quinn signed the MCPP, a **4-year pilot program** effective January 1, 2014, legalizing marijuana for medical purposes. It will allow registered users with identification cards issued by the Department of Public Health to buy up to 2.5 ounces every 14 days from a state-licensed dispensary.

New regulations are still in the formal rulemaking process. A final approval by the legislative body should be completed in August, when Illinois residents will be able to begin applying for cards. Early estimates indicate that **10,000 to 15,000 Illinois residents** will participate in the program.

Registering and opening the 21 planned marijuana cultivation centers and 60 dispensaries will take several additional months, which will likely make the first medical marijuana crop ready by late 2014 or early 2015. Once implemented, the law is sure to raise questions and lead to litigation testing and interpreting the law. While there is little court or regulatory guidance for the new law, Illinois employers should **take time to evaluate how the law impacts their workplaces.**

Qualified Registered Patients

The law protects qualified registered patients (and their doctors and drug providers) from criminal prosecution relating to medical marijuana. **Illinois residents** must secure a recommendation from an **Illinois-based doctor** (with whom they had a **prior and bona fide relationship**) for treatment of one or more of approximately **40 debilitating medical conditions** (including cancer, HIV, AIDS, glaucoma, multiple sclerosis, rheumatoid arthritis and muscular dystrophy) that would qualify patients to get recommendations from their doctors to use medical marijuana. People can petition to add their medical conditions to the list, and those petitions will

be considered twice per year in January and July. The Illinois Department of Public Health will review doctor recommendations to create a patient registry and must approve marijuana prescriptions before they are filled.

Reasonable Accommodations for Applicants and Employees

The new law affects the legal rights of individuals with disabilities as candidates and employees under disability discrimination laws, such as the federal Americans with Disabilities Act (ADA) and the Illinois Human Rights Act. The focus of these laws is whether the individual can perform the essential functions of the position, even with reasonable accommodations. Employers can still ask applicants whether they use any prescribed medication that could prevent the applicant from safely performing the job for which they have applied. If answer is yes, the employer may decline to hire, depending on the essential functions of the position. The same rules apply for existing employees who become registered patients.

Exceptions: Certain industries or positions – such as drivers and operators of heavy equipment – could never legally perform the essential functions as medical marijuana users; the laws obviously require drug-free operation. Additionally, MCPP does not require employers to comply if it would mean violating federal contracts or losing federal funding.

Federal/State Conflict

Several courts have held that federal statutes, including the ADA and the Family Medical Leave Act (FMLA), do not protect marijuana use by employees, nor require that employers accommodate registered patients since marijuana remains illegal under federal law. Still, those statutes may, and the Illinois Human Rights Act does, require employers to accommodate registered patients' medical conditions and associated medical treatment.

Because decisions rest heavily on the facts of each case, employers should consult counsel before declining an applicant or refusing an employee accommodations because of a medical marijuana prescription. Stay tuned for the July Client Bulletin addressing next steps for Illinois employers under MCPP.

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Events and Law Firm News

Thank you to the Independent Finance Association of Illinois for the opportunity to speak on Medical Marijuana and the Workplace on June 6.

Looking forward to presenting a North Shore LAW and Chicago Title and Trust CLE on June 23 with North Shore LAW colleague Stacy Streur: Developing Privacy and Data Security Issues for Small Business Owners and Employers - New Laws, Regulations and Best Practices

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This bulletin is an advertisement intended to provide clients and others with general information and is not intended to provide specific legal advice or opinions. Employers and workers seeking assistance with topics addressed in this bulletin or other workplace issues should contact Lori Goldstein at (847) 624-6640 or lori.a.goldstein@gmail.com. Visit www.lorigoldsteinlaw.com for more information about the Law Office of Lori A. Goldstein, LLC, which represents employers and employees.

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