

LAW OFFICE OF LORI A. GOLDSTEIN, LLC

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Medical Marijuana and Your Workforce - Part II Next Steps for Illinois Employers

This is the second in a three-part series covering the new Illinois Compassionate Use of Medical Cannabis Pilot Program Act and what it means for employers.

MCPP - Employer Provisions

The statute **clarifies employers' rights** to maintain a safe, healthy, lawful, and yes - drug-free – workplace even with an employee using medical marijuana. For example, *employers can adopt regulations* on consumption, storage, and timekeeping requirements for medical marijuana patients. The *law cannot be used to compel an employer to violate federal law* or cause it to lose federal funding or federal contract, nor to interfere with federal restrictions, including Department of Transportation rules.

Drug-free workplace policies are still valid, but must continue to be enforced in a nondiscriminatory manner. Employers have also been reassured that they can continue to enforce (or adopt new) **zero-tolerance substance** policies and drug tests, and employees cannot use the statute as a defense to failing a drug test. Like other legally protected classes, patients covered by MCPP can be **disciplined** for violating workplace rules like other employees.

But before disciplining an employee for apparent violation of a workplace drug policy, employers must give registered patients an **opportunity to contest** the basis for the determination of violation. The law protects employers' good faith actions based on a belief that a registered patient used or was in possession of cannabis while on work premises or during employment, or that the employee was impaired while working. There is also immunity from liability for injury or loss if the employer didn't know or have reason to know that an employee was impaired.

The statute considers employee "impairment" at work based on various factors:

- o Employee *manifests specific symptoms* while working that decrease or lessen performance;
- o Symptoms may include *speech, dexterity, agility, coordination, demeanor, or irrational or unusual behavior*;

- o *Negligence or carelessness in operating equipment or machinery;*
- o *Disregard for safety of others;*
- o *Involvement in accident that results in serious damage to equipment or property, disruption of manufacturing process; or*
- o *Carelessness that results in any injury to employee or others.*

MCPP - Discrimination Provisions

Discrimination is an obvious risk of the statute and the law prohibits it. Specifically banned are **discrimination against a covered patient by schools, employers, landlords** under certain circumstances, or in medical care. Nor can these schools, landlords, and employers be penalized for enrolling, leasing to, or employing cardholders. Importantly, no person or establishment is required to allow any guest, client, customer, or visitor to use cannabis on their property. Neither governmental medical assistance programs nor private insurers are required to reimburse costs associated with patient use.

Until the Illinois courts clarify the bounds of the law, employers should take great care in handling medical marijuana issues and review their drug policies with counsel. That the law is still in flux is emphasized by this **warning on Illinois' official MCPP website:**

WARNING

Members of the public should be aware that full implementation of MCPP will take time. The State of Illinois is warning that it will not be legal for anyone to grow, offer to provide, or to possess, medical cannabis until licenses have been issued and the program is up and running. If you receive a solicitation, we recommend you report it to the hotline for the Office of the Illinois Attorney General, Consumer Protection Division: 1-800-243-0618, or 1-877-844-5461 (TTY).

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Legal Employment News

June was a busy month of positive change in our nation's capital. The Obama administration extended the **Family and Medical Leave Act** to same-sex married couples, defining "spouse" to **include a legally married same sex spouse, even if the spouse or couple don't live in a state that recognizes same-sex marriage.** President Obama is also expected to sign an Executive Order to **add sexual orientation** to the discrimination protection of employees working for **federal contractors.**

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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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