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## Medical Marijuana in the Workplace

By Lynne Eisaguirre

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Here in Colorado and elsewhere, medical marijuana is a hot topic in the workplace. Do you have to allow employees to smoke weed at work? What if they're impaired at work? Are there safety concerns or problems? What if they have an underlying disability, do you have to accommodate?

These and other mysteries bedevil human resource managers these days. Fourteen states currently have medical marijuana laws including Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, New Jersey, New Mexico, Nevada, Oregon, Rhode Island, Vermont, and Washington. Several other states are considering medical marijuana legislation, including Alabama, Connecticut, Delaware, Illinois, Iowa, Massachusetts, Minnesota, Missouri, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, and Wisconsin.

In Colorado, over 20,000 people carry a marijuana card, indicating that they have a prescription to legally use the drug. As federal and state agencies battle over how and when to enforce federal and state laws, you may be left wondering what to do in your own workplace.

## Tips: What to do About Medical Marijuana in the Workplace

The short answer, according to Chuck Passaglia, an employment law attorney and trainer, is that you can choose to accommodate medical marijuana in your workplace or not. Under current case law, federal and state disability discrimination laws do not protect current users of illegal drugs and marijuana is still an illegal drug under federal statutes, even in states where there is a legal state use. (For more information on this complex subject, go to Passaglia's excellent on-line program at

<http://www.learningcontentnetwork.com/title.aspx?pid=424219265>.)

What should you do:

- If you currently have a drug testing program, be sure to review it in order to continue to follow federal, state and local law.
- Review your policy to make sure that it prohibits all illegally drug use
- Specifically address medical marijuana use in your policy
- Be sure that the policy prohibits being "under the influence" and having any "detectable amounts of illegal drugs in the system" while at work
- If you're a government employer, check whether there are special rules for government employees

- An employee's mere status (without use or detectable amounts) as a marijuana card holder, should not be a reason for discrimination or discipline
- Realize that you may still have to accommodate an employee's underlying disability, if any, and engage in an interactive process to determine whether there's an alternative reasonable accommodation

Most of all, you should be sure to consult your employment attorneys to make sure that you're following all applicable state and federal laws.