

Frequently Asked Questions

On November 2, Arizona voters passed the Arizona Medical Marijuana Act. Under the new law, individuals with specified medical conditions will be allowed to obtain a registry identification card from the Arizona Department of Health Services allowing the cardholder to obtain or cultivate marijuana. Arizona employers need to understand how this new law will impact personnel policies. These questions and answers address areas that are particularly relevant to policyholders of SCF Arizona and its subsidiary companies, especially if the policyholder is receiving a drug and alcohol testing program 5 percent premium credit.

Q. Will SCF Arizona and its subsidiary companies continue to offer the Arizona alcohol and drug-free workplace premium credit to employers with employees that have been issued medical marijuana cards?

A. Yes, as long as employers continue to administer their drug and alcohol testing programs as required under ARS §23-493 et seq. subject to the requirements of the new law, as more fully explained below.

Q. Will workers' compensation benefits cover the purchase of medical marijuana?

A. No, the law does not require public or private insurance to reimburse a person for costs associated with the medical use of marijuana. In addition, workers' compensation carriers in other states that have similar medical marijuana laws, such as Montana, have taken the position that the carrier cannot be compelled to pay for marijuana because the possession and use of marijuana is still illegal under federal law. Under the federal Controlled Substances Act, it is unlawful to manufacture, distribute, dispense or possess any controlled substance except as otherwise authorized by federal law for medical use. Marijuana is classified under federal law as a Schedule I substance. Schedule I substances are declared to have no accepted safety for use in medically supervised treatment and therefore renders the manufacture, distribution or possession of marijuana a criminal offense.

Q. Can an employer prohibit marijuana use at work?

A. Yes. The law does not protect an employee from possessing marijuana or using it on the employer's premises or during work hours. The law also does not protect an employee from being impaired from marijuana at work. Your policy should state that possession or use of, or impairment from marijuana in the workplace will not be tolerated. Marijuana will be treated like any other lawfully prescribed drug that may impair an employee's functioning at work. An employer should not tolerate any employees being impaired from drugs, legal or illegal, at work. Your policy should state that

this and state that employees should not report to work impaired. The employee should notify his supervisor of any impairment from medication that could pose a safety risk or affect the ability to work. Be aware that the employee does not need to identify the medication or the medical condition to the supervisor but the time off may be covered under ADA and/or FMLA and those processes may apply.

The new law also provides that an employer may refuse to hire or continue employment of a cardholder if the hiring or continued employment of the registered qualifying cardholder would cause the business to lose a monetary or licensing-related benefit under federal law or regulations.

Q. What if an applicant tests positive in a pre-employment drug test?

A. You cannot refuse to hire the applicant automatically. Employers cannot discriminate against applicants for medical marijuana use if the applicant is a registered cardholder. Determine whether the applicant is a registered cardholder. If he is, then the employer cannot base the hiring decision on the applicant's medical marijuana use outside of work. If marijuana use outside of work poses a safety risk, you may be able to refuse to hire the applicant. In addition, an employer who would lose a federal license by employing a marijuana user is not required to employ him. This analysis is complex and it is recommended that you seek legal advice in this situation.

Q. What if a current employee tests positive for marijuana on a drug test?

A. You cannot automatically terminate the employee. Determine if he is a registered cardholder. If he is a registered cardholder, and was not using marijuana at the workplace and was not impaired on the job, then the employer may not terminate, discipline or discriminate against the employee. Marijuana will be treated like any other lawfully prescribed drug that may impair an employee's functioning at work.

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Arizona Medical Marijuana Act

Q. Can an employer terminate an employee for being under the influence of marijuana at work?

A. Yes, but it is difficult to determine whether a person is under the influence of marijuana in the workplace. Under the law, "under the influence" does not include a registered qualifying patient who has a presence of metabolites or components of marijuana that appear insufficient to cause impairment. If the employer is able to document signs that the employee is under the influence, and witness testimony indicates use, possession or impairment at work, you may be able to substantiate that the employee is under the influence in violation of your policy.

Q. If it can be proved that the employee was under the impaired or under the influence of medical marijuana at work and the employee sustains a work injury, can the claim be denied?

A. In general, the answer to this question is no and it does not matter whether the employee is a cardholder or not. The Arizona Supreme Court has held that a claim for workers' compensation benefits cannot be denied even if the employee was impaired at the time of the injury as long as the employee was performing some aspect of work at the time of the injury. Only if the employee completely abandons the employment can a claim be denied.

Q. Should an employer change its policies to comply with the law?

A. Yes. Update your policies relating to drug use and drug testing to remove any language that says the employer will not hire or will terminate an employee who tests positive for marijuana. Add language to create an exception for registered cardholders. Your policy should state that you do not tolerate the possession, use of or impairment from marijuana at the workplace.

Also update your anti-discrimination policy to prohibit discrimination against employees or applicants based on their status as a cardholder.

Q. What if an employee tells her manager that she uses medical marijuana?

A. Keep the status of applicants and employees who are medical marijuana users confidential. As with any medical information, keep any information you receive in a file separate from the employee's personnel file. Remember that the law prohibits discrimination based on the employee's status as a cardholder.

Q. If an employee tells the employer that she uses marijuana for medical reasons, does that mean that she has a "disability" under the Americans with Disabilities Act (ADA)?

A. Maybe. The medical condition may constitute a disability as defined under the ADA. If it does, the employer will be required to engage in the interactive process to discuss with the employee if reasonable accommodations are appropriate. Many of the medical conditions defined in the law are likely to constitute a disability under the ADA. Be aware that the employee may also be eligible for leave under the Family Medical Leave Act (FMLA) if the condition is a "serious health condition" as defined by the FMLA.

Q. What other restrictions apply to the use or possession of medical marijuana?

A. The law does not allow a cardholder to smoke marijuana in any public place (including public transportation) or to possess marijuana on a school bus, preschool or primary or secondary school or in any correctional facility. The law also does not change existing laws that prohibit the operation, navigation or being in actual physical control or any motor vehicle, aircraft or motorboat while under the influence of marijuana.

Questions? Contact _____



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