

Headed to Work in Washington State? Don't Fire Up That Bong Just Yet ...

Despite voter approval liberalizing pot laws in two states, state marijuana laws haven't taken away an employer's right to maintain a drug-free workplace, especially as mandated by the Drug-Free Workplace Act of 1988 for companies with federal grants or contracts.

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Amy Naillon, a human resources generalist for a graphics firm in Portland, Oregon, was well-prepared before Dec. 6, when recreational marijuana became legal in Washington state.

Having read up on case law regarding marijuana and the workplace, attended seminars and subscribed to email alerts from a local employment law firm, Naillon already knew that the new law in neighboring Washington state had absolutely no effect on her company's zero-tolerance drug policy.

New Pot Laws? No Worries

An employment lawyer recommends making any [necessary revisions to company drug policies](#) so no gray areas exist between state and federal law.

Marijuana, whether for medical or recreational use, is still illegal under federal law, namely the Controlled Substances Act of 1970, which classifies marijuana as a Schedule I drug, along with heroin and crack cocaine. And state marijuana laws haven't taken away an employer's right to maintain a drug-free workplace, especially as mandated by the Drug-Free Workplace Act of 1988 for companies with federal grants or contracts.

Just the same, she braced herself for the inevitable questions from Washington residents employed by the firm and had her "No!" ready in case anyone asked if it was OK to smoke a joint at home before coming into work.

As it turned out, nobody asked.

"Most people are afraid to ask that question because then I might assume that they smoke pot," Naillon explained with a smile.

Unlike Naillon and her cautious employees, many employers and workers across the country weren't quite sure if the new recreational marijuana laws in Washington and Colorado hadn't just changed everything. Surprised by the widespread confusion, Nancy Delogu, a shareholder in the Washington, D.C., law firm of Littler Mendelson, said she asked a fellow lawyer, "Are we the only ones paying attention?"

Pot Laws Facing High Court Scrutiny?

[Nothing](#) is on the U.S. Supreme Court docket yet.

But perhaps while others weren't noticing, more than one-third of the United States has passed laws approving medical marijuana use. It's now legal in 17 states, as well as the District of Columbia.

California was the first state to approve medical marijuana in 1996, while Massachusetts became the latest state to approve its use in the November elections. In that same election, Washington and Colorado approved recreational use of marijuana as other states consider decriminalizing medical marijuana and, presumably, others are now toying with the idea of allowing recreational use.

Over the years, state supreme courts in California, Montana, Oregon and Washington have ruled that marijuana users are not protected from adverse employer actions. Furthermore, a May ruling by the U.S. Court of Appeals for the 9th Circuit stated that medical marijuana use is not protected by the Americans with Disabilities Act because the act's definition of "illegal drug use" is based strictly on federal law.

A few states, namely Arizona, Connecticut, Maine and Rhode Island have included language in their medical marijuana laws that protect users from adverse employer actions unless the employer is bound by federal law because of contracts, grants or strict U.S. Transportation Department regulations. Those laws, which protect an employee from being fired for failing a drug test (but not for coming to work impaired), have yet to be challenged in the courts.

The new Washington initiative specifically states that employers needn't change their drug policies on account of this liberalization of marijuana laws.

However, Delogu noted that employees using marijuana for medical purposes tend to elicit more compassion from employers than recreational users. Just the same, she says she encourages employer clients to forgo the liability and safety issues and instead urge marijuana users to "take the time to transition to a new vocation."

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