SCREENSAFE News
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# READY OR NOT HERE IT COMES

*The Compassionate Use of Medical Cannabis Pilot Program Act* went into effect January 1, 2014. Illinois is the 21st state to make medical marijuana available through a physician's "Written Certification"; not a prescription. Under federal law, marijuana is still a Schedule 1 drug, and therefore cannot be dispensed by prescription. The Act gives protections against being criminally charged for the use of Medical Cannabis as long as the Act is followed within the State of Illinois.

ScreenSafe has prepared for the questions that may arise from individuals regarding this Act.

The complete Act can be downloaded in its entire PDF format at: http://www.ilga.gov/legislation/publicacts/98/PDF/098-0122.pdf

**Public Act 098-0122 Section 50. Employment; employer liability.**

(a) Nothing in this Act shall prohibit an employer from adopting reasonable regulations concerning the consumption, storage, or timekeeping requirements for qualifying patients related to the use of medical cannabis.

(b) Nothing in this Act shall prohibit an employer from enforcing a policy concerning drug testing, zero-tolerance, or a drug free workplace provided the policy is applied in a nondiscriminatory manner.

(c) Nothing in this Act shall limit an employer from disciplining a registered qualifying patient for violating a workplace drug policy.

(d) Nothing in this Act shall limit an employer's ability to discipline an employee for failing a drug test if failing to do so would put the employer in violation of federal law or cause it to lose a federal contract or funding.

(e) Nothing in this Act shall be construed to create a defense for a third party who fails a drug test.

(f) An employer may consider a registered qualifying patient to be impaired when he or she manifests specific, articulable symptoms while working that decrease or lessen his or her performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, negligence or carelessness in operating equipment or machinery, disregard for the safety of the employee or others, or involvement in an accident that results in serious damage to equipment or property, disruption of a production or manufacturing process, or carelessness that results in any injury to the employee or others. If an employer elects to discipline a qualifying patient under this subsection, it must afford the employee a reasonable opportunity to contest the basis of the determination.

(g) Nothing in this Act shall be construed to create or imply a cause of action for any person against an employer for:

(1) actions based on the employer's good faith belief that a registered qualifying patient used or possessed cannabis while on the employer's premises or during the hours of employment;

(2) actions based on the employer's good faith belief that a registered qualifying patient was impaired while working on the employer's premises during the hours of employment;

(3) injury or loss to a third party if the employer neither knew nor had reason to know that the employee was impaired.

(h) Nothing in this Act shall be construed to interfere with any federal restrictions on employment including but not limited to the United States Department of Transportation regulation 49 CFR 40.151 (e).

What does the Act mean for an employer? As your drug testing consultant ScreenSafe and its employees are not attorneys and our comments should not be construed as legal opinions or legal advice.

Currently, courts in states with medical marijuana laws on the books have sided with employers when legal issues or questions have arisen.

Here are a few examples of court cases:

- Casis v. Walmart: Sixth Circuit Court of Appeals in Michigan ruled the law did not regulate private employment, only that the law gives medical marijuana users some protections from criminal prosecution
- Roe v. Teletech Customer Care Management: Supreme Court in Washington also ruled similarly to Casis v. Walmart
- Coats v. Dish Network: Colorado Court of Appeals in Colorado ruled that because marijuana is still federally illegal, employees have no protection

• Curry v. MillerCoors: Federal District Colorado Judge John Kane wrote

"I GRANT MillerCoors's Motion to Dismiss, Doc. 8, and DISMISS WITHOUT PREJUDICE. Mr. Curry's allegations unsuccessfully search and stretch Colorado law for an employment claim related to the medical use of marijuana. The alleged facts in this case make no such claim plausible. Mr. Curry, per MillerCoors's standard policies, took a drug screen that tested positive for cannabinoids. Under established Colorado law, discharging an employee under these circumstances is lawful, regardless of whether the employee consumed marijuana on a medical recommendation, at home or off work."

California's Compassionate Use Act for Medical Marijuana was enacted in 1996. However, ScreenSafe has administered random drug testing programs in California since 2007. ScreenSafe's California clients have policies that state clearly, "marijuana and its active ingredient THC are illegal under federal law and accordingly are included in this definition of drug notwithstanding any use that might be permissible under California law." ScreenSafe's California programs do not allow marijuana use in any circumstances per the policies. Programs administered by ScreenSafe in Illinois also clearly prohibit testing positive above the prescribed levels for marijuana. In California, beyond the occasional participant declaring that he/she has a medical marijuana card after a non-compliant result, ScreenSafe has had few difficulties concerning the use of medical marijuana as the policy is specific. As of now California and Illinois are the only two states covered by ScreenSafe where medical use of marijuana is permitted.

Ultimately, until the Illinois court system begins to set precedence, no one can be sure how this Act is going to fully impact employers. However, there are a few actions employers can follow to help ensure compliance with the Act.

- Review your current drug testing program
- Check how your policy covers marijuana
- Be aware that your policy does not conflict with federal guidelines
- Make certain covered employees have access to the policy
- Make certain that all employees are treated equally, determinations are firm, fair and consistent, and document everything
- Have supervisory staff trained in "Reasonable Suspicion"

ScreenSafe can train your front line personnel, supervisors, and managers on "Reasonable Suspicion Testing", what to look for if they believe an employee may be impaired, and how to handle such situations. Know your rights as an employer and be prepared.

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