



**SIGNET**  
PRE-EMPLOYMENT SCREENING

**MEDICAL  
MARIJUANA:  
A NEW DIMENSION  
IN EMPLOYMENT  
POLICIES**

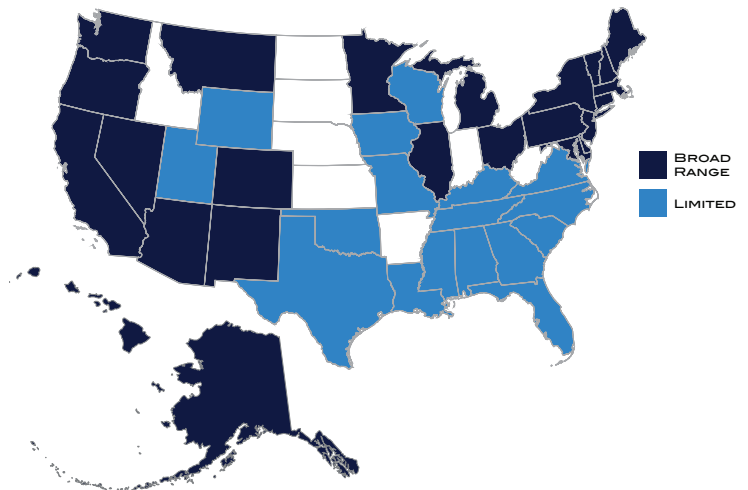
# 89%

of U.S. voters support legal use of marijuana by adults for medical purposes, if prescribed by a doctor.<sup>1</sup>

## INTRODUCTION

Medical marijuana, in addition to the illegal use of prescription and recreational drugs, is now a common issue where employers must understand all the ramifications and then implement effective employee policy. Forty-two states and the District of Columbia now allow some level of medical marijuana usage, while 25 states and the District of Columbia allow a broad range of treatment options.<sup>2</sup>

The Ohio legislature signed into law Ohio HB 523<sup>3</sup> that legalizes the possession and use of marijuana for medical purposes as well the legal possession of certain paraphernalia and accessories. The law became effective Sept. 6, 2016, so all Ohio employers are now faced with crucial decisions.



## WHAT DOES THE LAW ALLOW AND RESTRICT?

Ohio law mandates that patients or caregivers register to treat qualifying medical conditions, including:

- AIDS
- Alzheimer's
- Amyotrophic lateral sclerosis (ALS)
- Cancer
- Crohn's disease
- Epilepsy or other seizure disorder
- Fibromyalgia
- Glaucoma
- Hepatitis C
- Multiple sclerosis
- Post-traumatic stress disorder
- Other diseases or conditions added by the State Medical Board

## USAGE RESTRICTIONS

Caregivers are able to possess medical marijuana to help treat their loved one, but they are not permitted to use it themselves. Patient and caregiver supplies are not to exceed a 90-day limit.

Ohio law also restricts the way patients use medical marijuana. While vaporization is permitted, smoking, combustion or any form of use that's considered attractive to children is prohibited. The State Medical Board may approve additional methods of usage, with the exceptions of smoking or combustion.

# NOTICE

## THIS IS A DRUG-FREE WORKPLACE

## HOW THE LAW AFFECTS EMPLOYMENT PRACTICES

While medical marijuana for certain conditions is legal in Ohio, the law does not require employers to "permit or accommodate" its use, possession or distribution. The law also allows companies to refuse to hire, discharge or take adverse action due to the use, possession or distribution of medical marijuana.

Employers can legally:

- Have a drug testing, drug free and/or zero-tolerance policy
- Discharge an employee with just cause for medical marijuana usage
  - If the usage was in violation of company program or policy regulating use

During the hiring process, employers - whether or not they are in an accommodation state or not - must be careful to ensure that adverse employment decisions are based on medical marijuana usage and not on the underlying medical condition. If decisions are based on a medical condition, the company assumes liability under the Americans With Disabilities Act or state anti-discrimination laws.

Courts have ruled more in the favor of employers and are not supportive of discrimination claims.

## OTHER GUIDELINES: MULTI-STATE EMPLOYERS AND FEDERAL CONTRACTORS

As with any legislation or policy, there are other nuances to consider with medical marijuana policy. Companies that are multi-state employers or utilize federal contractors should understand the specific requirements of those states, as well.

With so many states following unique standards, multi-state companies have two different drug policy options:

1. Maintain separate employee handbooks for separate states
2. Establish a zero-tolerance policy that covers all employees throughout the organization's operations

Federal contractors are governed by the federal Drug Free Workplace (DFW) Act. The DFW Act requires entities that contract with the federal government to enforce zero-tolerance policies regarding use of illegal drugs in the workplace. Because federal contractors are subject to federal law and because marijuana is still a Schedule 1 illegal drug under federal law, no state law may require a federal contractor to accommodate marijuana use.

## LANDMARK COURT CASES

With medical marijuana being a relatively recent legal concern, there are not many standard higher level court cases. However, to this point, courts have ruled more in the favor of employers and are not supportive of discrimination claims.

One renowned case frequently cited is *Coats v Dish Network, LLC*<sup>4</sup>. The plaintiff, Brandon Coats, is a quadriplegic and in 2009 he received a state-issued license in Colorado to use medical marijuana to treat the painful muscle spasms caused by quadriplegia. He used medical marijuana after work and at home as required by his license and Colorado law.

From 2007 to 2010, Coats worked as a customer service representative for Dish Network, which maintains a zero-tolerance drug policy. Under company policy, Dish Network employees are subject to random drug tests.

In May 2010, Coats tested positive for tetrahydrocannabinol, a component of medical marijuana, during a random drug test. He informed his employer that he was a registered medical marijuana patient, and in June 7, 2010, Dish Network terminated Coats' employment for violating company drug policy.

The Colorado Supreme Court ruled in 2015 that because medical marijuana use is unlawful under federal law, a Colorado employee who uses medical marijuana cannot seek protection under Colorado's Lawful Off-Duty Activities statute, and employment can be terminated if the employee violates the employer's drug policies.

## WHAT THE RULING MEANS

The *Coats v. Dish Network* decision confirms that an employer's zero-tolerance drug policy remains lawful in Colorado.

Colorado employers should review their drug-testing policies to ensure that they include marijuana, including medical marijuana, as a prohibited substance.

While this ruling only affects Colorado law directly, employers in other states should do similar reviews of their drug-testing policies.

## CONCLUSION

Medical marijuana is becoming a more commonplace issue facing employers and employees. More states are passing legislation with unique and special requirements, plus state and federal laws will continue to evolve.

Smaller companies are more vulnerable to both illicit and medical marijuana usage as job applicants are more apt to seek employment at smaller companies that may not have established, companywide policies.

If a company does not have a written drug policy, it's recommended that officials draft a written policy that complies with state and federal laws before implementing drug testing. The policy should clearly set the rules, establish consequences for failure to follow the rules and provide some discretion for decision making.

For help understanding state and federal regulations and reviewing your drug policy, contact Karl R. Ulrich, Esq. of Sebaly Shillito + Dyer and for more information about drug screening and background checks, contact Matt Messersmith, President and CEO of Signet Screening.

## REFERENCES

1. Quinnipiac University National poll. June 2016.
2. National Council of State Legislatures: <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>
3. <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-523>
4. Coats v. Dish Network. Colorado Supreme Court Ruling 2015: [https://www.courts.state.co.us/userfiles/file/Court\\_Probation/Supreme\\_Court/Opinions/2013/13SC394.pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Opinions/2013/13SC394.pdf)

