



DELAWARE

EMPLOYMENT LAW LETTER

Part of your Delaware Employment Law Service

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Vol. 16, No. 3
March 2011

LEGISLATION

Delaware Legislature buzzing over medical marijuana

by William W. Bowser

Delaware has joined a growing list of states proposing or enacting medical marijuana laws. A bill to permit the use of marijuana for medical purposes was introduced in the Delaware General Assembly in late January of this year. Senate Bill 17, if enacted, would create an exception to Delaware's criminal laws by permitting the doctor- recommended medical use of marijuana by patients with serious medical conditions. Under the law, if a patient could produce written certification from his physician stating that he has a debilitating medical condition that would therapeutically benefit from medical marijuana, he would be protected from arrest.

Specifics of the bill

Patients would be allowed to possess up to six ounces of marijuana for their medical use. The legislation allows users to designate a caregiver who would also receive an ID card. Each caregiver may assist no more than five qualifying patients. The legislation would allow for the state-regulated nonprofit distribution of medical marijuana. The Delaware Department of Health and Social Services would issue registration certificates to qualified applicants.

The bill also contains restrictions on the medical use of marijuana, including prohibitions on public use and driving under the influence of the drug. While the proposed legislation states that you are not required to allow patients to be impaired at work or to allow the possession of

marijuana at a workplace, it does not address how employers should deal with employees who test positive for marijuana or ask for an accommodation under the Americans with Disabilities Act (ADA).

Legal issues, from ADA accommodation to safety

Legal questions are sure to come up regarding whether you must make accommodations under the ADA for employees who use medical marijuana (on or off the job) to treat a disability caused by a medical condition. At least one state supreme court has ruled that you don't have to make such accommodations. Because the ADA doesn't require accommodations that would create a threat to employee safety or an unreasonable risk of harm, some employers could argue that accommodating an employee who tests positive for marijuana or allowing marijuana use in the workplace creates a dangerous environment.

Speaking of dangerous environments, an added concern that medical marijuana patients pose for employers is workplace safety. You still must adhere to Occupational Safety and Health Administration and other federal regulations for safety, especially when employees perform potentially dangerous tasks such as operating heavy equipment, machinery, or motor vehicles as part of their job duties.

Bottom line

Enactment of a medical marijuana law in Delaware would usher in a whole host of issues for HR administrators. We will keep you posted on the progress of this bill.

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