



GUIDE FOR EMPLOYERS

MARIJUANA AND OTHER SUBSTANCES OF USE IN THE WORKPLACE

1. Under the Maine Medical Use of Marijuana Act (MMUMA) –
 - “an employer may not refuse to employ or otherwise penalize a person solely for that person’s status as a qualifying patient...”; however,
 - The MMUMA does not require “an employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana.”
2. Drug tests for marijuana typically show levels in a person’s system well after the “effects” wear off, so if marijuana is legalized, employees may fail a drug test and yet not have used marijuana while at work and not have a level in their system that causes impairment.
3. Employers’ policies may require that employees not use marijuana or other substances of use while at work and that they may not come to work impaired even if their use is “legal.” Employers can take appropriate disciplinary action when company policies or state/federal substance use laws are violated. Other rules related to unemployment, treatment and counseling may also apply.
4. Under current unemployment employee misconduct presumptions, use of “illegal” drugs may be considered misconduct; it remains unclear, however, if marijuana were to be “legalized” on a state level but remained illegal on a federal level, how that presumption would be interpreted. This may require a statute change to clarify.

MDOL Recommendations

1. Employers should first establish a drug-free workplace policy (DFWP) that articulates their requirements and expectations of employees regarding substance use and impairment while in the workplace.
2. Employers who wish to conduct substance abuse testing may also develop a drug testing policy for approval by MDOL. See www.maine.gov/labor/labor_laws/substance_abuse_testing for more information about the policies and the testing law. The Department provides guidance and written templates to employers who wish to develop either a drug-free workplace policy or any drug testing policies.
3. With approved policies in place, employers may conduct the following types of drug testing:
 - Pre-employment (applicants)
 - Employee Probable Cause (reasonable suspicion)
 - Employee Random
 - Employee Arbitrary (e.g. on an anniversary date)

Based on studies done in 2015, MDOL is shifting its emphasis from drug testing for specified substances to encouraging employers to detect and respond to impairment in the workplace regardless of its cause, in order to protect employees from harming themselves and others at work.

MDOL, in collaboration with DHHS-SAMHS, has developed a program to train employers to detect and respond to impairment in their worksites. This is a workplace adaptation of certain protocols used by Drug Recognition Experts in the law enforcement community and is currently offered through the Department’s SafetyWorks! Training Institute. To register for a class, go to:
http://www.maine.gov/tools/whatsnew/index.php?topic=Safetyworks_Classes&v=ListAll.

MDOL is working with other states that have already enacted some form of legalization and/or medical use to identify best practices for both employers and employees.

For more information, contact the Bureau of Labor Standards at 207-623-7900 or mdol@maine.gov (TTY users dial Maine Relay 711).

Employment-Related Provisions of the Marijuana Legalization Act

7 MRS CHAPTER 417 – This law is in full effect, including the sections noted below §2454. Construction

*“2. **Employment policies.** This chapter may not be construed to require an employer to permit or accommodate the use, consumption, possession, trade, display, transportation, sale or growing of cannabis in the workplace. This chapter does not affect the ability of employers to enact and enforce workplace policies restricting the use of marijuana by employees or to discipline employees who are under the influence of marijuana in the workplace.”*

*“3. **School, employer or landlord may not discriminate.** A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person 21 years of age or older solely for that person's consuming marijuana outside of the school's, employer's or landlord's property.”*

Discussion

- Based on the wording of the law, an employer may continue to:
 - Prohibit any use or possession of marijuana **at work**
 - Discipline employees found “*under the influence*” (impaired) by marijuana **at work**
- Based on the wording of the law, an employer may not be able to discipline an employee or disqualify a job applicant based **solely** on a positive marijuana test.
- The Maine Department of Labor (MDOL) recommends that before taking any actions or preparing new policies relating to employees and substance use, employers should consult with experienced employment counsel.
- MDOL’s focus will be on helping employers identify and respond to impairment in the workplace, regardless the substance involved or any other cause, in order to protect worker safety and maintain productivity.
- *In Maine, marijuana is still on the list of substances for which an employer may test. Testing is only allowed if a company has a drug testing policy that has been approved by the Maine Department of Labor (MDOL). MDOL can approve testing based on the Substance Abuse Testing Law, which MDOL oversees. The law governing the use of recreational marijuana is overseen by the Maine Department of Agriculture, Conservation and Forestry and the medical marijuana law is overseen by Maine Department of Health and Human Services. MDOL is not able to provide advice as to whether taking disciplinary action or refusing to hire someone may violate these laws. The Department encourages employers to consult with private legal counsel*