

OREGON'S MARIJUANA LAWS AND THE WORKPLACE

I. NO DRUG USE POLICIES

Oregon statute allows employers to require employees to be free from illegal drug use.

§ 659A.127

Permitted employer action

ORS 659A.112 (Employment discrimination) to 659A.139 (Construction of ORS 659A.103 to 659A.145) do not affect the ability of an employer to do any of the following:

(1) An employer may prohibit the transfer, offering, sale, purchase or illegal use of drugs at the workplace by any employee. An employer may prohibit possession of drugs except for drugs prescribed by a licensed health care professional.

(2) An employer may prohibit the use of alcohol at the workplace by any employee.

(3) An employer may require that employees not be under the influence of alcohol or illegally used drugs at the workplace.

(4) An employer may require that employees behave in conformance with the requirements established under the federal Drug-Free Workplace Act of 1988.

(5) An employer may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment, job performance and behavior to which the employer holds other employees, even if the unsatisfactory performance or behavior is related to the alcoholism of or the illegal use of drugs by the employee.

(6) An employer may require that employees comply with all federal and state statutes and regulations regarding alcohol and the illegal use of drugs. [Formerly 659.444]

II. HISTORY OF OREGON MEDICAL MARIJUANA PROGRAM (OMMP) AND THE EMPLOYER

A. History of OMMP

The Oregon Medical Marijuana Act (OMMA) was approved by voters on November 3, 1998. This created a state controlled system in which patients with qualifying debilitating conditions could apply for a license to consume marijuana legally. In May of 1999, the Oregon Medical Marijuana Program (OMMP) was established to administer the Oregon Medical Marijuana Act and create a registry cardholder system.

While the OMMA allowed for certain exemptions from criminal prosecutions, it did not specifically address whether employers with “no illegal drug use” policies could legally terminate the employment of OMMP cardholders. In 2010, *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industry* became a landmark case in Oregon regarding this issue.

B. *Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus.*, 348 Or. 159, 230 P.3d 518 (2010)

Emerald Steel involved an employment discrimination claim where a temporary employee was told that he would have to pass a drug test as a condition of permanent employment. The employer had a “no illegal drug use” policy. The employee told the employer that he was an OMMP cardholder and was under the supervision of a doctor. A week later the employee was discharged. The employee brought an unlawful discrimination claim against the employer.

The employer argued that state law does not require an employer to accommodate an employee’s use of marijuana to treat a disabling medical condition. The employer argued that employment discrimination protections under ORS 659A.112 were not applicable because the Controlled Substances Act preempts any protections or exemptions an OMMP cardholder would receive “as the use of medical marijuana is an illegal use of drugs within the meaning of ORS 659A.124” *Emerald Steel*, 230 P.3d at 536.

The Oregon Supreme Court held that while ORS 475.306(1) authorizes the use of medical marijuana and exempts criminal prosecution, ORS 659A.112 does not apply as an employer is not required to accommodate an employee’s use of medical marijuana.¹ It held that the Control Substances Act preempts the OMMA and the use of medical marijuana, which is an illegal drug under ORS 659A.124. *Id.*

While *Emerald Steel* concerned the employer’s right to fire a person using medical marijuana, it did not address any other use of marijuana. Will the same legal analysis apply to recreational marijuana use?

III. RECREATIONAL MARIJUANA IN OREGON AND THE EMPLOYER

A. Measure 91 and “legalization” of marijuana

The November 4, 2014 Oregon general election resulted in the passage of Measure 91. This ballot measure, formally known as the *Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act*, makes Oregon the third state to legalize the recreational use of marijuana.

¹ “Given the number of the issues discussed in this opinion, we summarize the grounds for our decision briefly. First, employer preserved its challenge that, as a result of the Controlled Substances Act, the use of medical marijuana is an illegal use of drugs within the meaning of ORS 659A.124. Second, two potentially applicable exclusions from the phrase “illegal use of drugs”-the use of drugs authorized by state law and the use of drugs taken under the supervision of a licensed health care professional-do not apply here. Third, regarding the first potentially applicable exclusion, to the extent that ORS 475.306(1) authorizes the use of medical marijuana, the Controlled Substances Act preempts that subsection. We note that our holding in this regard is limited to ORS 475.306(1); we do not hold that the Controlled Substances Act preempts provisions of the Oregon Medical Marijuana Act that exempt the possession, manufacture, or distribution of medical marijuana from state criminal liability. Fourth, because employee was currently engaged in the illegal use of drugs and employer discharged him for that reason, the protections of ORS 659A.112, including the obligation to engage in a meaningful interactive discussion, do not apply. ORS659A.124. It follows that BOLI erred in ruling that employer violated ORS659A.112.” *Emerald Steel*, 1230 P.3d at 536.

The ballot measure decriminalized private consumption and possession of personal quantities of marijuana for adults under Oregon law, and specifies licensing, regulation, and taxation of commercial marijuana.

Different than the Oregon Medical Marijuana Act, The Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act (Measure 91) did include provisions regarding employment matters in regards to recreational marijuana.

SECTION 4. Limitations. Sections 3 to 70 of this Act may not be construed:

- (1) To amend or affect in any way any state or federal law pertaining to employment matters;
- (2) To amend or affect in any way any state or federal law pertaining to landlord-tenant matters;
- (3) To prohibit a recipient of a federal grant or an applicant for a federal grant from prohibiting the manufacture, delivery, possession, or use of marijuana to the extent necessary to satisfy federal requirements for the grant;
- (4) To prohibit a party to a federal contract or a person applying to be a party to a federal contract from prohibiting the manufacture, delivery, possession, or use of marijuana to the extent necessary to comply with the terms and conditions of the contract or to satisfy federal requirements for the contract;

HB 3400 which modified many sections of Measure 91, did not amend the above language.

Per *Emerald Steel*, it is clear that it is not discriminatory for an employer to enforce a “no illegal drug use” policy against medical marijuana users. Now that marijuana is no longer illegal under state law, does the “no illegal drug use” policy still apply?

B. Employer prohibition of illegal use of drugs

Oregon law allows employers to prohibit the use of illegal drugs. “An employer may prohibit the transfer, offering, sale, purchase or illegal use of drugs at the workplace by any employee.” (ORS 659A.127(1)) For employment law purposes, marijuana is categorized as drug that can be used illegally.

C. Is recreational use an exception to illegal use of drugs?

Some may posit that with the “legalization” of marijuana, marijuana use is no longer “illegal” and an employer may not take an adverse employment action for an employee’s use of marijuana.

Oregon Revised Statutes state that an employer can take action against an employee that is illegally using drugs.

ORS 659A.124: Illegal use of drugs

(1) Subject to the provisions of subsection (2) of this section, the protections of ORS 659A.112 (Employment discrimination) do not apply to any job applicant or employee who is currently engaging in the illegal use of drugs if the employer takes action based on that conduct.

(2) The protections of ORS 659A.112 (Employment discrimination) apply to the following individuals:

(a) An individual who has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs.

(b) An individual who is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs.

(c) An individual who is erroneously regarded as engaging in the illegal use of drugs.

(3) An employer may adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subsection (2)(a) or (b) of this section is no longer engaging in the illegal use of drugs. [Formerly 659.442; 2009 c.508 §9]

In Oregon, the illegal use of drugs is defined in ORS 659A.122(1)²:

A “drug” is defined as: “a controlled substance, as classified in schedules I through V of section 202 of the federal Controlled Substances Act, as amended, and as modified under ORS 475.035 (Authority to control schedule).”

The “illegal use of drugs” is defined as:

any use of drugs, the possession or distribution of which is unlawful under state law or under the federal Controlled Substances Act, as amended, but does not include the use of a drug taken under supervision of a licensed health care professional, or other uses authorized under the Controlled Substances Act or under other provisions of state or federal law. ORS 659A.122 (2).

As noted in subsection (2) above, there are four exceptions to the definition of “illegal use of drugs.”

² As used in this section and ORS 659A.124 (Illegal use of drugs), 659A.127 (Permitted employer action) and 659A.130 (Conditions that do not constitute impairment): (1) Drug means a controlled substance, as classified in schedules I through V of section 202 of the federal Controlled Substances Act, as amended, and as modified under ORS 475.035 (Authority to control schedule). (2) Illegal use of drugs means any use of drugs, the possession or distribution of which is unlawful under state law or under the federal Controlled Substances Act, as amended, but does not include the use of a drug taken under supervision of a licensed health care professional, or other uses authorized under the Controlled Substances Act or under other provisions of state or federal law. [Formerly 659A.100]

Exception one: Illegal drugs, when taken under the supervision of a licensed health care professional, would be permissible. However, Oregon’s recreational program does not require supervision of a licensed health care professional to consume marijuana.

Exception two: Other uses authorized under the Controlled Substances Act are another permissible use. Under the federal Controlled Substances Act marijuana has no legitimate use.

Exception three: Other uses authorized under other provisions of federal law are also permissible. While the federal government has an investigational drug program (IND), the federal government has stopped allowing new medical marijuana patients into the program.

Exception four: Other uses authorized under other provisions of Oregon state law. Recent Oregon case law has addressed whether employees can rely on the exclusions for uses authorized under “other provisions of state law” to assert that recreational marijuana use is not an illegal use of drugs within the meaning of ORS 659A.124.

While three of these exceptions are arguably inapplicable to an employee who uses marijuana recreationally, the fourth requires further understanding, especially in light of *Emerald Steel*.

1. *Emerald Steel* and implications for recreational use under exception four of ORS 659A.122(2)

The employee in *Emerald Steel* pointed to the OMMA as an “other provision of state law” exception that authorized his use. In defense, the employer claimed that there was an implied federal preemption that rendered the “other provision of state law” inapplicable

In *Emerald Steel*, the Oregon Supreme Court held that implied federal preemption renders inapplicable this “other provisions of state law” OMMA exception. The implied federal preemption “exists not only when it is physically impossible to comply with both state and federal law, but when “under the circumstances of the particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Willis v. Winters*, 350 Or 299, 308 (2011), citing *Hines v. Davidowitz*, 312 U.S. 52, 67–68, 61 S.Ct. 399, 85 L.Ed 581 (1941). Here, the use of marijuana stands as an obstacle to the federal CSA because it comes from a state law that affirmatively allows what is prohibited by federal law.

Up until Measure 91, *Emerald Steel* was the precedent employers used when they terminated an employee who used marijuana. However, with the passage of Measure 91 and marijuana’s recreational use, *Willis v. Winters* must be analyzed.

2. *Willis v. Winters*, 350 Or 299 (2011)

In *Willis* the issue was whether Sheriffs had to issue concealed weapons permits to medical marijuana card holders. Several Sheriffs refused based upon federal law making it illegal for “unlawful users” of controlled substances to possess firearms. The Court in *Willis* stated that *Emerald Steel* did not announce “a stand-alone rule that any state law that can be viewed as ‘affirmatively authorizing’ what federal law prohibits is preempted.” *Willis*, 350 Or. at 309 n.6. The Court stated that Oregon courts must look at the more general federal rule.

Under Oregon law, a concealed weapon license holder is exempted from the criminal statutes that make it illegal to carry a firearm concealed on one's person. The Court in *Willis* made the distinction that an Oregon statutory scheme which exempts a person from criminal penalties does not affirmatively authorize what the federal statute prohibits. The court stated that the exemption did not authorize possession of firearms by unlawful drug users, which is against federal law.

Under Measure 91, the criminal penalties for possessing small amounts of marijuana are removed, and thereby exempting a person from state laws against possession of marijuana. It does not authorize possession for a non-license holder. Therefore, using the rationale in *Willis*, it does not affirmatively authorize what the federal statute prohibits, possession of a federally illegal drug.

After *Emerald Steel*, it seems clear that an employer can legally terminate an employee for using marijuana. However, after *Willis v. Winters*, it is not as clear that an employer can fire an employee for using marijuana. An employer cannot defend a termination of an employee who used marijuana legally off-duty by simply stating that Measure 91 is pre-empted by federal law under the Emerald Steel logic.

D. Questions left unanswered

- 1. Does the federal government authorize the use of illegal drugs through implied or explicit authorization?**
 - a. Implied authorization**

There are arguments that can be made claiming that the federal government has implicitly authorized the use of marijuana.

Some may argue that the Cole Memorandum clearly is an implied authorization of marijuana. On August 29, 2013, Deputy Attorney General James Cole released a Memorandum guiding all United States Attorneys regarding marijuana enforcement for states that legalize marijuana for medical or recreational use. While the U.S. Department of Justice acknowledged that marijuana is a dangerous drug and the illegal sale of marijuana is a serious crime, it also stated that it would not focus its resources on the enforcement of the Controlled Substances Act, as long as the states and local jurisdictions ensure that they implement "strong and effective regulatory and enforcements systems." U.S. Department of Justice, Office of the Deputy Attorney General, James Cole, August 29, 2013.

Another possible interpretation of implied authorization comes from the renewal Rohrabacher-Farr Amendment to the "Cromnibus" bill that was originally signed by President Barack Obama in December 2014. This amendment limits the Justice Department's ability to take criminal action against state-licensed individuals or operations that are acting in full compliance with the medical marijuana laws of their states. The renewal was included in omnibus spending bill that was passed in December 2015.

b. Explicit authorization

There are multiple bills being introduced in the Congress that will re-schedule marijuana. If marijuana is rescheduled from a Schedule I to Schedule II drug, the argument can be made that there is explicit authorization from the federal government and implied preemption would no longer be applicable.

Moreover, if marijuana is de-scheduled, then licensed health care professionals would be allowed to prescribe marijuana. In this case, exception one of the "illegal use of drugs" would be applicable.

E. Employees prohibited from using marijuana after Measure 91

Certain employees will be prohibited from using marijuana under Measure 91 under federal or state regulations. Under federal regulation drug testing will remain mandatory for: Uniformed services; Federal civilian employees³; Contractors receiving federal grants or contracting with the federal government⁴; and certain workers in the federally regulated transportation industry including railroad employees⁵; aviation employees⁶ and Commercial Motor Vehicle operators.⁷ Under Oregon state regulation, the Early Learning Council rules will continue to prohibit licensed child care providers from both holding a medical marijuana card and using medical marijuana.⁸ The Council’s recently passed administrative rules were specifically aimed toward *medical* marijuana OMMMP cardholders. While the Council referred to recreational marijuana use, they did not fully flesh it out as they may be in process of figuring out how to enforce a no-use ban when there is no paper trail for someone who is legally allowed to possess it.

F. Issues to Consider

1. Policies

a. Employers who want to preserve right for no illegal or marijuana drug use and no possession

Employers who want to preserve the right for a drug-free workplace should review their current drug and alcohol policy. Stating “an employee cannot use illegal drugs” may no longer be sufficient protection. An employer should include specific wording pertaining to marijuana, marijuana products, and illegal drugs under federal law.

At this point it is settled case law that an employer can terminate a medical marijuana employee without repercussions, whereas, courts have yet to address the employer’s ability to terminate an employee who consumes legal marijuana. While Measure 91 does not affirmatively allow someone to use marijuana if an employer does not want them to, this issue will certainly be addressed by Oregon courts.

b. Employers who are tolerant of marijuana consumption by employees on personal time or during work hours.

There are multiple ways in which an employer can choose to assert its drug policy rules while being tolerant of marijuana consumption by employees. This can be done through specific rules regarding drug testing, as well as the implementation of certain policies. It is important for an Employer to understand the legal consequences of liability issues and insurance issues if they are going to have a marijuana tolerant policy.

Employers who want to require urine or blood testing may require drug testing for other illegal drugs and exclude marijuana. An employer should specifically include guidelines for their drug testing policy.

³ Executive Order 12564 (issued by President Reagan on September 15, 1986) mandates drug testing for all federal civilians.

⁴ Federal Drug-Free Workplace Act of 1998

⁵ Federal Railroad Administration, 49 CFR Part 219.

⁶ Federal Aviation Administration, 14 CFR Part 120.

⁷ Federal Motor Carrier Safety Administration, 49 CFR Part 382.

⁸ OAR 414-300-0015. Issuance of a Child Care Certificate. (1) A certificate shall not be issued by OCC to an applicant who holds a medical marijuana card. A certificate shall not be issued to an applicant who grows marijuana or distributes marijuana. See also OAR 414-205-0035 and OAR 414-350-0030.

An employer, while being tolerant of off duty use, may not want employees to be in possession of marijuana or marijuana products at the workplace, also known as having a marijuana-free workplace. The employer needs to clearly indicate their requirements in their policy documents.

An employer who has a marijuana tolerant policy, but uses an outside HR department needs to be aware of the HR Company's policy regarding marijuana. An employer should inquire if the outside HR contractor tests for marijuana when screening potential new hires.

While an employer may be tolerant of employees use during their personal time, an employer may require that their employees are not impaired at the workplace. An employer's policy should state that employees must be free from impairment at work.

This then begs the question, what constitutes being free from impairment and whether an employer, if they have suspicion that an employee is impaired at work, will require a drug test. If the employer requires a drug test for workplace impairment, will they choose to include marijuana?

If the employer chooses to require a drug test after suspicion of impairment, that should be included in the Company's policy. An employer needs to recognize that marijuana metabolites stay in the system for at least 30 days, so if they do require a marijuana drug test after suspicion of impairment, will they gain any worthwhile knowledge from the test? If the employer wants to have the right to terminate employment based on the drug test, they must state so in their policy.

2. What is impairment?

The scientific community has not agreed upon a simple test for impairment that will hold up in court. When Washington legalized marijuana they set a per se DUII limit of 5 nanograms of delta-9 THC per millimeter of blood. This simply presumes impairment at that level. However, there are opponents that claim that someone who uses marijuana nightly will always have 5 nanograms of delta-9 THC per millimeter of blood in their system.

In Oregon, Measure 91 instructs the Oregon Liquor Control Commission to research the effect of delta-9 tetrahydrocannabinol, the primary psychoactive ingredient in marijuana, on the ability of a person to drive. That research could later be applied to employment questions for impairment in the workplace and liability issues.

G. Sample company policy language for intoxicants in the workplace for employers who want a drug-free workplace.

It is the policy of the Company to promote a drug-free workplace. The manufacture, distribution, possession, sale, purchase, dispensation, offer to buy or sell, or use of an illegal drug or marijuana or related paraphernalia and the illegal use of any drugs, including marijuana and marijuana products, and the misuse of prescription drugs in the workplace or while engaging in Company business is strictly prohibited. The Company also prohibits such conduct during non-working time to the extent that, in the judgment of the Company, it impairs an employee's ability to perform on the job or threatens the reputation or integrity of the Company.

Employees who use prescription drugs should follow the prescribing physician's directions for use. If use of a prescription drug may impair performance or affect safety on the job, you should notify your supervisor immediately so the Company can take whatever action if finds appropriate to protect your safety and that of coworkers.

An employee may be required to undergo drug or alcohol testing when the Company, in its discretion, determines there is a reasonable basis for testing or to the extent testing is required or permitted by law, including random testing and testing in connection with a workplace accident or injury. The Company also may institute pre-employment drug testing in the future as it considers appropriate. All Company-required drug and alcohol tests will be paid for in full by the Company. An employee may request a re-test at his/her own expense.

An employee who violates this policy is subject to discipline, including immediate termination. At its discretion, the Company may require an employee who violates this policy to participate in and successfully complete a substance abuse assistance or rehabilitation program and agree in writing to special conditions for continued employment.
(For more detail, this policy can include definitions)

H. Sample Company Policy for Intoxicants in the Workplace for employers who are tolerant of marijuana use.

The Company has vital interests in ensuring a safe, healthy and efficient working environment for our employees, their co-workers and the customers we serve. The Company is concerned about the use of alcohol, illegal drugs and controlled substances at it affects the workplace. Use of these substances, whether on or off the job, can adversely affect an employee's work performance, efficiency, safety and health and therefore serious impairs the employees value to The Company. In addition, the use or possession of these substances on the job constitutes a potential danger to the welfare and safety of employees and exposes The Company to the risk of property loss or damage or injury to other persons.

For these reasons, we have established as a condition of employment and continued employment with The Company the following intoxicants in the workplace policy.

Controlled substances (because of psychoactive effects) are defined by the federal and state governments to describe five levels of drugs, with schedule I drugs being the most restrictive and illegal to possess or use (i.e., heroin, LSD and marijuana) and schedule V drugs (i.e., cough syrup, aspirin and sleep aids) available without prescription at most retail stores.

Employees are prohibited from reporting to work or working while under the influence of alcohol and/or other drugs that adversely affect the employee's ability to safely perform his or her job duties.

The Company does not engage in random and/or pre-accident drug testing of employees. Employee substance abuse problems will be identified by issues with behavior and measures of performance only.

The Company understands that there is a difference between substance use and substance abuse, and that use isn't necessarily abuse. Employees are free to make their own lifestyle choices when not in the workplace or otherwise on company time. However, such choices must not interfere with job performance.

Employees are prohibited from reporting for duty or remaining on duty with any alcohol or any other intoxicants in their systems. Employees are further prohibited from consuming alcohol or other intoxicants during working hours, including meal and break periods.

The Company, in its discretion, believes that an employee is impaired at the workplace, may require the employee to submit to a urine test or a breathalyzer test.

Failure to comply with the foregoing substance abuse policy may result in disciplinary action, up to and including immediate termination.

I. Lessons from Colorado and Washington

Colorado and Washington have active litigation regarding employment issues and legal marijuana use.

1. Colorado

In *Coats v. Dish Network, L.L.C.*, the Supreme Court of the State of Colorado upheld the firing of a quadriplegic medical marijuana patient who testing positive for marijuana. Coats argued that his termination violated Colorado's "Lawful Activities" statute which prohibits an employer from discharging an employee for engaging in lawful activity while off duty. The Court cited federal law and stated that the activity was not lawful. Activity must be lawful on both the state and federal side. *Coats v. Dish Network, LLC*, 350 P.3d 849 (Colo. 2015). The Colorado Supreme Court rejected the argument that the employee was protected from firing since he did not violate a state law.

In *Curry v. MillerCoors, Inc.*, the Federal District Court for the District of Colorado came to a similar conclusion as *Coats*. NO 12-CV-02471-JLK, 2013 WL 449307 (D. Colorado, August 21, 2013).

In *Beinor v. Indus. Claim Appeals Office*, the Colorado Court of Appeals held that an employee who tested positive for marijuana may be denied unemployment benefits. 262 P.3d 970, 974-75 (Colo. App. 2011).

2. Washington

In Washington, the City of Seattle, announced a policy prohibiting employees from using marijuana on personal time, as they receive federal grants and were concerned about losing funds and being subject to penalties under the Federal Drug-Free Workplace Act of 1988.

In *Roe v. Teletech Customer Care Management (Colorado) L.L.C.*, the Washington Supreme Court held that an employer is not required to accommodate medical marijuana use. 257 P.3d 586 (Wash. 2011). It can be inferred that if the court does not allow for medical use, they will certainly not allow for recreational, as most medical users, but for the fact that they use marijuana, would fall under the protection of the Americans with Disabilities Act.

TABLE OF CONTENTS

- I. NO DRUG USE POLICIES..... 1**
- II. HISTORY OF OREGON MEDICAL MARIJUANA PROGRAM (OMMP) AND THE EMPLOYER 1**
 - A. History of OMMP 1**
 - B. *Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus.*, 348 Or. 159, 230 P.3d 518 (2010)..... 2**
- III. RECREATIONAL MARIJUANA IN OREGON AND THE EMPLOYER..... 2**
 - A. Measure 91 and “legalization” of marijuana 2**
 - B. Employer prohibition of illegal use of drugs 3**
 - C. Is recreational use an exception to illegal use of drugs? 3**
 - 1. *Emerald Steel* and implications for recreational use under exception four of ORS 659A.122(2)..... 5**
 - 2. *Willis v. Winters*, 350 Or 299 (2011)..... 5**
 - D. Questions left unanswered 6**
 - 1. Does the federal government authorize the use of illegal drugs through implied or explicit authorization? 6**
 - a. Implied authorization 6**
 - b. Explicit authorization 6**
 - E. Employees prohibited from using marijuana after Measure 91..... 7**
 - F. Issues to Consider 7**
 - 1. Policies 7**
 - a. Employers who want to preserve right for no illegal or marijuana drug use and no possession 7**
 - b. Employers who are tolerant of marijuana consumption by employees on personal time or during work hours. 7**
 - 2. What is impairment? 8**
 - G. Sample company policy language for intoxicants in the workplace for employers who want a drug-free workplace. 8**
 - H. Sample Company Policy for Intoxicants in the Workplace for employers who are tolerant of marijuana use. 9**
 - I. Lessons from Colorado and Washington..... 10**
 - 1. Colorado 10**
 - 2. Washington..... 10**