

Employee Assistance Program Bulletin

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Marijuana Legalization & the Workplace

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The passing of Amendment 64 to legalize marijuana in Colorado has raised many questions about what this exactly means. Given that marijuana is still illegal on a federal level, there is much confusion about how the federal law will be enforced in Colorado. In a now infamous quote, Governor John Hickenlooper warned Coloradans not to "break out the Cheetos and Goldfish too quickly," (Ferner, 2012). We definitely have more questions than answers on this issue right now, but there are some things we do know.

- Governor Hickenlooper must certify the results of the vote to legalize marijuana within 30 days of the election (Ferner, 2012). Until then, it remains illegal to possess marijuana without a medical marijuana card (Ingold, Hoover, & Mitchell, 2012).
- Possession of up to one ounce of marijuana will be legal, but public use will not (Gurman, 2012). For example, smoking marijuana at a ball game or concert will remain illegal.
- Under the new law, adults can grow up to 6 plants in their homes (Gurman, 2012).
- Colorado adults, age 21 and older, will be able to purchase up to one ounce of marijuana at specialty shops (Gurman, 2012).
- It will be at least one year before businesses are permitted to sell marijuana to individuals without a medical marijuana card in Colorado. A regulatory system must be set up first before these businesses can open (Allen, 2012). Marijuana would be available for legal sale in late 2013 or early 2014 (Kersgaard, 2012).



Federal Conflict

The federal government could respond to the new state legalization in both Colorado and Washington in a number of ways. They could do nothing. They could wait until marijuana businesses are set up, and then shut them down (Kersgaard, 2012). They could also choose to fight the law in court over the next year before businesses open, claiming that the state law is pre-empted by federal law (Gurman, 2012). Attorney General Eric Holder, a formerly outspoken opponent of legalization, has remained silent about the issue since the election (Ferner, 2012). Governor Hickenlooper has reached out to Holder to get support around how to handle the conflicting federal and state laws (Ingold, Hoover, & Mitchell, 2012). For now, we will have to wait and see how it all shakes out.

The Effect on the Workplace

Employees and employers alike may be wondering what the new legislation means for their drug-free workplace policies. Employers are still not required to accommodate employee's use of marijuana at work. Businesses can continue to test employees for marijuana (Kersgaard, 2012). They may terminate employees if they violate the drug-free workplace policy by testing positive for marijuana. There may be changes down the road giving more guidance to employers about how to handle off-duty employee marijuana use. But for now, Curtis Graves with the Mountain States Employers Council advises businesses to "not do anything different than they have," (Allen, 2012).

It is worth noting that employees with medical marijuana cards who test positive for marijuana are also in violation of most drug-free workplace policies. A card is not a prescription; it does not exempt employees from following their workplace's policies.

For further guidance on issues around marijuana and the workplace or drug-free workplace policies, please contact your Employee Assistance Program (EAP), Peer Assistance Services, Inc., at **303-369-0039**.

Sources

Allen, R. (08 Nov 2012). *Colorado just legalized pot. Now what?* USA Today. Retrieved 11 Nov 2012 from <http://www.usatoday.com/story/news/nation/2012/11/08/colorado-marijuana-legalized-question-answer/1692117/>

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Kersgaard, S. (20 Sep 2012) *Future shock: What happens if Colorado legalizes pot?* The Colorado Independent. Retrieved 11 Nov 2012 from <http://coloradoindependent.com/124845/future-shock-what-happens-if-colorado-legalizes-pot>.

Employers are not required to accommodate employee's use of marijuana at work.

A medical marijuana card does not exempt employees from following their workplace's policies.