



## TESTIMONY REGARDING POTENTIAL EMPLOYER ISSUES OF MEDICAL MARIJUANA LEGALIZATION

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# EMPLOYMENT-RELATED ISSUES

- Safety
- Confidentiality
- Discrimination claims and other lawsuits
- Insurance concerns
- Indirect increased costs
- Effect of legalization on business climate

# SAFETY IS JOB ONE

- Costs of ensuring safe workplaces continue to escalate, including due to risks such as distracted driving, increased driving time, faster production demands, etc.
- More injuries means increased workers' compensation, unemployment, and litigation costs

# Legalizing Medical Marijuana will potentially increase safety-related costs

- Costs of drug-testing applicants, employees
- Increased management training costs
- Increased need for supervision, oversight

# Legalizing medical marijuana could mean more requests for accommodation

- Employees under the influence of medical marijuana could have unknown side effects that make them unable to perform their duties.
- Same restrictions apply as to employees using prescription drugs: must report to management and can't work if side effects

# CONFIDENTIALITY CONCERNS

- Employers are limited from health-related inquiries (Americans with Disabilities Act, O.R.C. §4112, etc.)
- Lack of knowledge about medical marijuana side effects makes ability to accommodate difficult.
- Could employers verify whether employees are lawfully enrolled in medical marijuana program?
- Would employees candidly report being under the influence/having side effects if they might be taken off duty without pay?

# LIABILITY FOR EMPLOYERS

## 1. Physical Injuries To User Or Others:

- Injuries in manufacturing jobs or driving-related jobs are increased when employees are under the influence, even when they don't appear impaired.
- Employers are concerned about injury to:
  - their employees
  - their transported goods
  - third parties (the public)

# LIABILITY FOR EMPLOYERS

## 2. Workplace Regulation / Citations

- OSHA obligates employers to provide a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm” to employees.
- Any marijuana legalization has the potential to increase injury and citation risks

# LIABILITY FOR EMPLOYERS

## 3. Discrimination Claims

- Employers should not have to accommodate medical marijuana use or give “free pass” to patients who fail random testing
- Could a person terminated for failing a random test bring a disability discrimination suit claiming that, although s/he was under the influence, s/he was not impaired or unable to perform work duties?
- Costly lawsuits, even when employer prevails.

# SPECIAL PROTECTION?

- Would the state intend to provide special protections for employers or for registered users of medical marijuana?
- What guidelines will medical professionals apply (and can employers rely on)?

# LIABILITY FOR EMPLOYERS

## LOSS OF INSURANCE COVERAGE?

- Disability discrimination claims may be declined by employment practices liability insurance (EPLI) if underlying claim involves employee under the influence of medical marijuana. Claims could include:
  - Termination, wrongful discharge
  - Discipline, failure to promote
  - Retaliation
- EPLI policies vary by company, by state

# LIABILITY FOR EMPLOYERS

## INCREASED UNEMPLOYMENT COSTS

- Will a positive drug test resulting in termination be an automatic bar to unemployment benefits?
- Increased claims translate to increased unemployment fund contributions by employers

# LIABILITY FOR EMPLOYERS

## BWC IMPLICATIONS

- O.R.C. §4123.54(B) allows employers to reject claims that involve a positive drug screen, and allows claimants to rebut that presumption.
- What effect would a positive test have on claims, and on claims management, meaning medical treatment of an individual who has a medical marijuana prescription?
- Increased claims = increased BWC premiums?

# LIABILITY FOR EMPLOYERS

## GROUP HEALTH COVERAGE

- Some states with medical marijuana laws expressly do not require health insurance providers to reimburse for medical marijuana
- If Ohio were to legalize medical marijuana and not carve this out, the cost of offering group health coverage could be affected

# LIABILITY FOR EMPLOYERS

## EFFECT ON COLLECTIVE BARGAINING

- Drug testing is a mandatory subject of bargaining.
- How would medical marijuana legalization affect bargaining (and impasse) if unions seek modification of existing contract language?
- Must employer disregard positive drug test if employee claims s/he was not impaired?
- Would employers be immune from grievances if employer takes worker off duty when medical marijuana affects his/her ability to do the job?

# GENERAL CONCERNS

- What do we mean by “medical marijuana”? What would be permissible? Oil? Edibles? Smoked?
- Could impact workplace policies on:
  - Smoking
  - Possession at work
  - Whether it can be consumed during work time
- Several states’ statutes specify that medical marijuana can’t be consumed in public or at work.

# IMPACT ON OHIO'S BUSINESS CLIMATE

- Ohio may become less attractive/competitive to companies that don't want to expend additional resources to combat potential dangers
- Will potential workers' comp and unemployment rate increases serve as deterrents to business expansion?