

Employment Law Corner

Monthly Report



FOLEY & FOLEY^{PC}
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May Updates

[America Runs on...Child Labor?](#)

[SCOTUS Takes on Religious Accommodation Test](#)

[Don't Fail This Test](#)

Dazed and Confused about Marijuana Laws?

Marijuana Law Trend:

The legalization of recreational marijuana by many states is a blazing hot issue—pun intended. Let's not forget--marijuana is still a schedule 1 drug at the federal level (illegal for recreational use). With many states legalizing recreational marijuana use, thorny issues are popping up in the workplace.

In some states that allow recreational marijuana use, further protections have been put in place to shield users. Employers may be prohibited from firing, refusing to hire, or disciplining an employee solely because they are a recreational marijuana user. Fortunately, employers do not have to allow employees to use marijuana at work or work under the influence, but you cannot discriminate against an employee who enjoys using marijuana on their own time.

For employers, there are issues beyond workplace impairment that must be resolved.

Drug Testing:

The increased legalization of marijuana laws has left a lot of employers questioning how they should handle pre-employment and current employee drug testing. Unlike other substances, marijuana stays in the system well past the time it was used. Because recreational use is allowed, potential hires cannot be discriminated against for off work, legal conduct.

Even though most states do not prohibit an employer from testing for marijuana, removing it from your pre-employment screenings helps mitigate the risk of a discrimination claim. If you cannot remove it from the screenings, consider enacting a policy that will not eliminate candidates based on a positive marijuana test.

This means that in a pre-employment screening, if a candidate tests positive for marijuana (in a state where it is recreationally legal, or the individual is a medical marijuana user) you should not automatically disqualify that individual from employment. When it comes to marijuana, limit any disciplinary actions to situations where employees are using or under the influence at work, outlined below.

Like alcohol, you can test an employee for marijuana use if you have a reasonable suspicion an employee is using or is under the influence while at work. If you test based on reasonable suspicion, it is best to have a detailed reasonable suspicion

policy that outlines symptoms, behaviors, and factors that managers should be trained to spot.

Medical Marijuana:

The testing issues reviewed above do not apply to medical marijuana. Even in states where it is not recreationally legal but is medically legal, you cannot discriminate against an employee for the use of medical marijuana. If an employee is a qualified medical marijuana user, and has the documentation to prove it, you cannot take adverse action against the employee based on their status as a qualified user. Although, as with recreational use, you do not have to allow an employee to use medical marijuana at work or work while under the influence of medical marijuana.

Watch Out for State Specific Laws:

Some states have stricter reasonable suspicion testing requirements than others. Some states allow random testing and some others do not. Some states have exceptions to their testing rules for safety sensitive positions, and others do not. Some states require accommodation for disabilities under their state disability law, others do not.

Pay attention to your individual state laws to determine which policies and practices your workplace should adopt.

If that seems like a lot of work—especially for you multi-state employers—we can help. We keep up with all the state and even local laws, so you do not have to. We have the resources to help you evaluate the state laws, craft marijuana policies, and advise you on how to move forward! **Contact us.**

What is the Employment Law Corner?

At **Foley & Foley, PC** protecting your business and reducing your exposure and risk is our endgame. We get it! We created this Employment Law Corner to keep you up to date on current topics. Each month we will provide an update by one of our seasoned lawyers that will help your team successfully navigate employment law compliance obligations and Human Capital Risk Management so that you can remain focused on what you do best – operating your business.

Who We Are

We want to **introduce ourselves** to those we have not met:

- We represent employers exclusively from coast to coast in all facets of employment law and litigation. Our mission is solving problems and anticipating issues so you can concentrate on your business.
- We are constantly searching for the trends and upcoming issues in the law that will impact our clients. We want our clients to be informed and ready. Our familiarity with the workplace and our approach sets us apart from other law firms, making us well equipped to handle your unique needs.
- We are not like other firms: Anyone can tell you what the law states and its limits. That's easy. We find creative solutions within those restrictions that move your business forward. We seek to minimize your risk so you can get back to business. Learn how we can help your business: **Foley & Foley PC attorneys specializes Employment and Labor Law in the Public and Private Sectors (foleylawpractice.com)**

Contact Us



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