

You Can Smoke Weed In DC! And Your Employer Can Fire You For It!

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Take Away: The District of Columbia may let you possess marijuana, but the federal government still considers it illegal, and employers can still fire you for smoking it.

Washington, D.C. recently joined 22 other states which have laws legalizing some use or possession of marijuana. The scope of these laws varies widely. The status of D.C.'s new law, in particular, remains questionable because Congress has the authority to overrule D.C. laws. But, let's assume for a moment that individuals in D.C. who are over the age of 21 may possess and smoke marijuana legally. Under that assumption, an employee might further assume that he or she cannot be disciplined for legally possessing or smoking marijuana, especially if done on personal time and without interference with job duties. The employee would be wrong.

Under federal law, marijuana is still illegal and D.C. does not have any law which protects an employee against a failed drug test. Further, there is no law prohibiting an employer's zero-tolerance drug policy. Even where the use of marijuana is for medical purposes (with a valid prescription), because of current federal law, there is likely not protection for employees from the Americans with Disabilities Act.

Employers need to consider whether and how to adapt to the new laws. They should be asking: Does the company's handbook need to be revised? Is the drug testing policy still appropriate? Should a new policy be implemented specifically addressing marijuana use? How is the company going to address the use of medical marijuana or employees seeking an accommodation related to a valid medical prescription for marijuana use? At the same time, employees need to be aware that their jobs may not be protected by the mere legalization of marijuana.