

## CEP Magazine – March 2022

### Legal cannabis: A compliance challenge

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Across the US, with every legislative session, states are legalizing the medical and adult-use consumption of cannabis. Is your company ready?

There are steps that every compliance and ethics officer must take to prepare your organization for legalization of cannabis, even if you are not in a state that has taken steps to legalize yet. Whether it is applicants, your employees, board members, vendors, suppliers, or subcontractors, cannabis is a new risk area that warrants our full attention as compliance and ethics professionals.

Consider this quite reasonably foreseeable scenario: a Maryland-based manager drives to West Virginia for a client meeting. While stopped at a light driving a corporate car, the employee is rear-ended in West Virginia and is injured. The employee is transported to a West Virginia hospital where the employee's urine is tested as a routine post-accident measure for worker's compensation. The test is positive for THC metabolite because the employee is an authorized Maryland medical marijuana cardholder and consumes a marijuana tincture daily at dinner to control nausea from a medical condition. Has the employee violated the law or employer policies? Will your insurance carrier cover medical and worker's compensation payments? Can the company legally terminate the employee? Should the employee be terminated for a no-fault accident? Was the employee under the influence of cannabis at the time of the accident? These questions pose both compliance and ethical challenges.

Aside from this example, day-to-day issues are also challenging employers. With such broad legalization, what is to stop your employees from enjoying a "toke" on a vape pen or some infused edibles while co-workers take a smoke break for a cigarette? Surprisingly, not much.

With 48 states, the District of Columbia, and US territories lawfully permitting some form of cannabis consumption, and 18 states authorizing adult-use of cannabis, the legal landscape creates risks for employers who seek to balance a drug-free work environment with the rights of their employees to receive medical treatment or engage in lawful adult-use consumption outside of the workplace.

Of course, marijuana remains illegal under federal law as a Schedule 1 substance even though there has been a crescendo of support for federal legalization, creating friction between federal and state laws, including laws on employees' disability and discrimination protections. There is even friction between states. For example, while some states explicitly say that an employer is not required to accommodate the use of medical marijuana, others provide affirmative protection for workers who lawfully use medical marijuana or even adult-use consumption.

The legal patchwork is impressive, and for multistate employers, it poses risks that span from hiring to firing. The risks posed by cannabis legalization need to be addressed and mitigated by companies *before* they arise.

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