



MEDICAL MARIJUANA IN SCHOOLS

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CURRENT STATUS OF STATE LEGALIZATION

As of March 30, 2018:

- Thirty states and the District of Columbia currently have laws broadly legalizing marijuana in some form.
- Eight states and the District of Columbia have adopted the most expansive laws legalizing marijuana for recreational use. Most recently, sales of recreational-use marijuana in California kicked off on January 1st.
- **The vast majority of states, including North Dakota, allow for limited use of medical marijuana under certain circumstances.** Treatment varies from state to state.
- A number of states have also decriminalized the possession of small amounts of marijuana.

FEDERAL TREATMENT OF MARIJUANA

- **Controlled Substances Act**: Marijuana is classified as a Schedule I drug that lacks any acceptable medical use and its manufacture, distribution and possession are prohibited.
- **2009 DOJ Memorandum**: U.S. Attorneys directed “not to focus” federal resources on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for medical use of marijuana.
- **2011 DOJ Memorandum**: Core priority is the prosecution of significant traffickers of illegal drugs, not individuals who use marijuana as part of a recommended treatment regimen.
- **2018 DOJ Memorandum**: Rescinded previous guidance which essentially enabled states to legalize marijuana without federal intervention. New guidance will allow U.S. Attorneys to prosecute individuals for marijuana distribution and possession, even in states where it is currently legal.

CASE STUDY

- A high school English teacher who has taught in a school district in North Dakota for 20 years informs her principal that she is suffering from chronic back pain and her physician has prescribed marijuana to relieve the pain.
- The teacher tells the principal that she ingests and smokes the marijuana every morning and night so that she can work and sleep.
- The teacher wants to be able to ingest brownies containing marijuana during lunchtime at school.
- The school district, like almost all school district's in North Dakota, has a drug-free workplace policy. The school district is concerned about the impact that allowing the teacher to possess and use marijuana at school will have on the staff, students, parents, and the community.
- The principal is concerned that if it becomes known that the teacher has been allowed to possess and use marijuana at school that the credibility of the school's anti-drug message to students will be undermined.
- The superintendent is concerned that other employees will make similar requests and that parents and the community will react negatively to any use of marijuana at school.

WHAT SHOULD (AND CAN) THE SCHOOL DISTRICT DO?

IS THERE A DUTY TO ACCOMMODATE THE EMPLOYEE?

- Must a school district employer accommodate the teacher's medical marijuana use?
- Does it matter if the teacher only desires to use marijuana during off-duty (or after work) time?
- So far, the answer to these questions has for the most part been “no”:
 - For purposes of federal law, marijuana is unacceptable for medical use. Therefore, not a reasonable accommodation under ADA.
 - Not a “lawful activity” under federal law. Therefore, under state anti-discrimination laws, employers can regulate and not discriminatory.

NORTH DAKOTA LAW ON MEDICAL MARIJUANA

- NDCC Chapter 19-24.1 – contains the provisions and regulations relevant to medical marijuana use under ND state law.
- NDCC § 19-24.1-33: Possessing or consuming usable marijuana is **prohibited**:
 - (1) On a school bus or school van that is used for school purposes;
 - (2) On the grounds of any public or private school; and,
 - (3) At any location while a public or private school sanctioned event is occurring at that location.
- So, school district can deny teacher's request to possess or consume medical marijuana on school property. School district could discipline the teacher for possession or consumption on school property.

MEDICAL MARIJUANA USE IN WORKPLACE

Can the teacher be a medical marijuana cardholder?

- Yes, BUT.....the school district can have policies in place on drug use and determine which positions are prohibited from using a controlled substance at all times, even if prescribed.

Can the school district prohibit medical use off of school property?

- Covered and safety sensitive employees are prohibited from using a controlled substance, including marijuana, **at all times** unless use is at the instruction of a physician, and the physician has advised that the use will not affect the employee's ability to perform safety-sensitive duties.
- Covered employee = employee/position subject to the Omnibus Transportation Employee Testing Act.
- Safety-sensitive position = a job in which a momentary lapse in the discharge of duties poses a safety threat with potentially severe consequences (i.e. school vehicle drivers).

MEDICAL MARIJUANA USE IN WORKPLACE

Can you drug test the employee?

- Employees serving in covered or safety-sensitive positions are required to participate in all applicable drug and alcohol testing as a condition of employment.
- If the employer suspects an employee is using medical marijuana, it is recommended that the employer follow any policies it may have regarding the use or possession of drugs in the workplace.

MEDICAL MARIJUANA USE IN WORKPLACE

If suspect an employee is under the influence of medical marijuana, what steps should be taken?

- When an employee's behavior indicates misuse of drugs, complete a Record of Behavior Data. Do not attempt to make allegations or diagnose behavior beyond observed and reported behavior.
- If accumulated information appears to indicate a high probability that the employee's job performance is endangered, the employer should conduct an interview with the employee.
- A formal chemical dependency diagnostic interview (and possibly treatment if indicated as a necessary) may be made a condition of continued employment if performance adversely affected. If in violation of Drug-Free Workplace policy, employee could be subject to discipline.

BACK TO CASE STUDY

- The teacher may be barred from possessing or using marijuana at school. ND law specifically prohibits possession or consumption at school.
- If the teacher's use of marijuana off of school property and outside of work hours adversely impacts her job performance, the school district likely could take further action, including termination.
- Likely no duty to accommodate use of medical marijuana AS THIS TIME, especially if adversely affects job performance.
- HOWEVER, if the teacher is a medical marijuana cardholder and meets all of the requirements under ND law, it is recommended that the school district consider addressing the issue with compassion while at the same time upholding their policies.