

Legal Connections



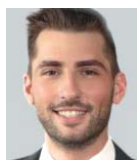
POWERED BY THE COLUMBUS BAR ASSOCIATION

MARCH 15, 2019

WHAT EVERY EMPLOYER NEEDS TO KNOW ABOUT MEDICAL MARIJUANA IN OHIO

In January, Ohio's Medical Marijuana Control Program, or MMCP, formally launched with the opening of the state's first dispensaries. Years in the making, the MMCP provides alternative medical treatment to eligible patients but also raises difficult questions for employers on how to deal with qualifying employees. Conflicting federal and state laws as well as concerns about how to remain compliant in the face of an evolving regulatory landscape should be of the utmost concern to every Ohio business owner.

The MMCP allows employers to accommodate or prohibit medical marijuana use as they see fit. Employers have wide managerial discretion, and may make hiring and other employment decisions based on medical marijuana use. Additionally, because medical marijuana



WALTER (CHAD) BLACKHAM
Mac Murray & Schuster LLP

remains illegal under federal law, it is not protected under the Americans with Disabilities Act and employers are not required to accommodate its use.

Employers should be cautious, however, as the employee's underlying medical condition may be covered by the ADA. While the MMCP protects employers from lawsuits if they fire an employee for medical marijuana use pursuant to company policy,

failure to follow protocol may create the appearance that the employee was instead fired because of their underlying condition. Employers should make employment decisions in accordance with standing company policy, or risk potentially subjecting themselves to retaliation under the ADA.

To further protect themselves, employers should avoid making firing decisions based on medical marijuana use if they

expressly state or imply that they will accommodate qualifying employees. However, if an employer prohibits medical marijuana and fires an employee for its use, Ohio law provides that the employee will be discharged for "just cause." As such, employees fired for medical marijuana use pursuant to company policy are generally not eligible for severance benefits and are likely barred from receiving state unemployment compensation.

Insurance issues must be considered as well. Employers who accommodate medical marijuana should review drug-testing procedures in light of their policies. Marijuana can remain in an individual's system for extended periods of time, and a drug test can produce a positive result even if the employee has not used medical marijuana for several days. If a business's policies mandate drug-testing following an accident, employees who test positive may be denied coverage even if they were

"In certain cases, state and federal laws may conflict. An attorney can help you draft business policies that comply with both: cbalaw.org/directory."

Jill Snitcher McQuain, Esq.
Executive Director
jill@cbalaw.org



EDUCATION & EVENTS

Looking for CLE classes? For a full listing or to register, call 614-221-4112 or enroll online at www.cbalaw.org.

not under the influence at the time of the accident.

Despite the challenges it presents, accommodating medical marijuana use can help businesses retain skilled employees and prevent "brain drain." To maximize the benefits of their policies, employers should institute clear and uniform procedures. For example, they may choose to have a physician verify the employee's medical condition, or they may consult with the employee's doctor regarding reasonable accommodations. Employers should consider modifying the duties of medical marijuana users in safety-sensitive positions.

The MMCP represents a new frontier bringing unique legal challenges to Ohio business owners. Whether an employer wishes to accommodate or prohibit medical marijuana use, retaining counsel to review and evaluate your company's policy can help you maintain compliance and protect your business from liability. ■

Limited copies left! Order your 2019 Columbus Bar Directory today and have the central Ohio legal community at your fingertips: cbalaw.org

5 REALISTIC WAYS TO PREVENT EMPLOYEE THEFT

Employee theft is an unfortunate reality for businesses of all sizes. According to the National Federation of Independent Business, employees are 15 times more likely to steal from a business than a non-employee.

Prevention is the best way to protect your business. These five simple measures can help prevent employee theft:

1. Background Checks. Conduct pre-hire background checks, especially for anyone handling money, financial records or merchandise. Be sure to comply with all relevant federal, state and local laws, and be mindful of the Fair Credit Reporting Act's requirements when conducting a background check or consumer report search through a

third party business. Similarly, reference checks provide insight into a potential employee's background.

2. Handbook Policies and Acknowledgment. Ensure your business has policies addressing confidentiality, company property, trade secrets and a zero-tolerance policy for employee theft. Employees should also sign an acknowledgment of these policies and be regularly reminded of the company's policies.

3. Install Security Measures and Manage Inventory. Restrict access to financial records and confidential information to only those employees who need it, and consider a point of sale system to isolate and track individual employee

transactions. Require periodic password changes and ensure security measures are regularly reviewed to prevent former employees from re-accessing information.

4. Prevent Time Theft. Time theft may occur through extended breaks, altered time cards or excessive personal time during working hours. Review employee time cards for accuracy and discrepancies. Consider time and attendance software for tracking working hours. When disputing working hours and an employee's paycheck, be aware that wage and hour laws are complex and can create expensive liability if not complied with.

5. Reporting Methods. Provide realistic,



DEVIN M. SPENCER, ESQ. & DAVID H. THOMAS, ESQ.
Taft Stettinius & Hollister LLP

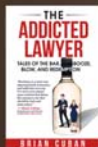
easy ways for employees to report coworker theft or fraud. Employees may be reluctant to report coworker theft, so consider an anonymous or online reporting method.

By taking proactive action, you can help protect your business from workplace theft. ■

For questions or comments, please contact David H. Thomas, Esq., or Devin M. Spencer, Esq., at Taft Stettinius & Hollister LLP.

A Conversation with

BRIAN CUBAN



📅 April 4 ⌚ 9am-1:30pm @ The Athletic Club

Complimentary Admission. CBA Members Only.

Brian Cuban was living a lie. With a famous last name and a successful career as a lawyer, Brian was able to hide his clinical depression and alcohol and cocaine addictions—for a while. Today, as an inspirational speaker in long-term recovery, Brian looks back on his journey with honesty, compassion, and humor as he reflects on what he has learned about himself and his career choice and how the legal profession enables addiction. 4.0 Prof. Conduct CLE Hours. Seats are limited.

Register now:

www.cbalaw.org

📞 (614) 221-4112