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WORK INJURIES AND CANNABIS INDUSTRIES

Medical marijuana was legalized in Ohio on Sept. 8, 2018, and codified under Ohio Revised Code Chapter 3796. Medical marijuana is approved for 21 "qualifying" medical conditions, including PTSD, traumatic brain injuries and pain that is chronic and severe or intractable. Under the Ohio Administrative Code, the Ohio Bureau of Workers' Compensation (BWC) only reimburses for drugs that are approved by the FDA, dispensed by enrolled pharmacy providers, and are present on the BWC's drug formulary list.

For the time being, medical marijuana is not approved by the United States Food and Drug Administration, as it remains a Schedule I illegal drug under federal law. As a result, the BWC will not reimburse medical marijuana. However, employers and workers should monitor how the law



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evolves over time, as changes may be coming. Multiple states, including Connecticut, Minnesota, New Jersey, New York and New Hampshire, currently reimburse for medical marijuana that is prescribed for workplace injuries (each state has its own caveat to the general rule).

Without reimbursement through the BWC, the overall effect of medical marijuana on BWC claims has been minimal. When medical marijuana was legalized, many employers protected themselves by establishing or updating their drug-free workplace policy. Additionally, the medical marijuana law does not change the fact that an employee who tests positive for marijuana is generally not eligible for workers' compensation benefits. If an injured worker tests positive for marijuana, there is a rebuttable

presumption of intoxication being the cause of the accident (and therefore not compensable).

However, on July 30, 2019, Governor Mike DeWine signed Senate Bill 57 into law. S.B. 57 legalizes cannabidiol extracted from hemp (CBD), which comes from cannabis plants and contains no more than 0.3 percent tetrahydrocannabinol (THC). CBD has minimal THC, which is the psychoactive compound of cannabis plants. This new law sanctions the sale of CBD oil, making it available for purchase over-the-counter in retail stores. The legalization of CBD raises new questions for employees and employers around the state of Ohio.

While this new law does not alter an employer's right to maintain a drug-free workplace policy, it may warrant a revision of their current policy. Drug screening detects the presence of THC, and some hemp-based products

can contain traces of THC. While an employee would need to consume a significant amount of CBD products to test positive, it is still a possibility.

Moreover, because CBD is available over-the-counter, it may soon be reimbursed by the BWC. While marijuana still has many hurdles to reimbursement by the BWC, S.B. 57 makes reimbursement for CBD more likely. Thus, the legalization of CBD products will create unique arguments for employees who test positive for THC after workplace accidents.

It is no secret the cannabis industry is growing quickly. Like everything new, there will be new regulations and rules surrounding their use. As a result, employees and employers are encouraged to pay attention to these changes and seek counsel as necessary. ■

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YOU CAN'T PREVENT WORKPLACE HARASSMENT CLAIMS BY DISCRIMINATION

While workplace harassment claims have steadily risen over the past decade, many employers continued to rely on their "traditional" anti-harassment practices. Then, the #MeToo movement went viral, and many of them began to rethink the effectiveness of the traditional approach to harassment prevention. Often, they recognized that this approach alone was failing to prevent harassment, and began to supplement it with tools for fostering physical and psychological safety in the workplace.

At the same time many employers began moving in a positive direction on



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harassment prevention, some male executives and managers reacted defensively to the #MeToo movement and began limiting their interactions with their female co-workers and subordinates. This was demonstrated when LeanIn.Org and SurveyMonkey partnered in 2018 and 2019 to understand workplace relationships between men and women in the #MeToo era. For example: 60 percent of male managers reported being

"uncomfortable participating in a common work activity with a woman, such as mentoring, working alone or socializing together," and "Senior-level men" reported being hesitant to spend time with "junior women" on various basic work activities.

Approximately one-third of the survey respondents reported that they have avoided interacting with their female colleagues in the workplace because they were "nervous about how it would look" or they were "fearful" of opening themselves up to potential harassment claims.

This line of thinking is not only unfortunate; it also represents potentially unlawful discrimination. It shows that some men are treating their female colleagues differently and, more critically, that they are intentionally blocking them from activities that are vital to their career advancement.

Aside from the potential legal liability from this exclusionary behavior, the underlying misperceptions and fears driving it need to be addressed. In short, everyone involved

needs to understand how avoidance is bad for everyone involved. For instance, it:

- undermines workplace cultures that promote mutual respect for all;
- frustrates diversity and inclusion initiatives; and
- leads to potential revenue loss where clients and customers request (and in some instances require) diversity within the organizations with which they work.

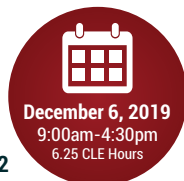
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