



MEDICAL MARIJUANA COMPLIANCE ROADMAP

1. Policy considerations.
 - A. Federally mandated testing programs
 - (1) No change is permissible
 - (2) All federal testing programs require marijuana to be prohibited
 - B. General company policy
 - (1) Review current (or proposed) policy statements
 - (2) Identify all provisions affecting marijuana users
 - (3) Delete any language that absolutely prohibits marijuana use
 - (4) Prepare new provisions
 - a. Notice to employees of how marijuana use will be treated
 - b. Identifying need to have current and valid state authorization
 - (5) Reminding employee of statutory prohibitions
 - a. No use on the premises
 - b. No use during work
 - c. No driving under the influence of marijuana
 - d. No use in public view
 - (6) Identify processes
 - a. Should you require advance notice of use
 - b. What verification do you want
 - C. General caveats
 - (1) Consider treating marijuana same as prescription medication
 - (2) Consider whether to make policy changes on interim basis
 - (3) A comment about language: "Prescribed" is a term of art; marijuana cannot be "prescribed" but it can be "authorized"
 - D. Do you have a medical review officer ("MRO")
 - (1) Is the MRO certified
 - (2) How much of the practice is devoted to occupational medicine
 - (3) Does the MRO stay up to date
 - (4) How does the MRO handle/report prescription abuse
 - (5) How does the MRO handle/report medical marijuana
2. Is there a disability?
 - A. Evaluate whether employee has a disability
 - B. Borrow from BOLI:
http://www.boli.state.or.us/BOLI/TA/T_FAQ_Disability.shtml
 - C. Borrow from the EEOC: <http://www.eeoc.gov/policy/docs/902cm.html>

- D. Oregon law allows evaluating the employee in the medicated state, new federal law does not
 - E. User who does not have a disability is not protected by disability statute
3. Engage in the interactive process with the employee.
Is a reasonable accommodation available that does not require marijuana use?
Consider requiring medical opinion about other available medications
 4. Is the employee a direct threat?
 - A. Individualized assessment
 - B. Present ability to perform essential functions safely
 - C. Based on objective reasonable medical judgment
 - D. Considering
 - (1) The duration of risk;
 - (2) The nature and severity of potential harm;
 - (3) The likelihood that potential harm will occur; and
 - (4) The imminence of potential harm.
 5. Is an accommodation possible?
 - A. In the incumbent job?
 - B. In a different job?
 - C. Borrow from the EEOC: <http://www.eeoc.gov/policy/docs/accommodation.html>
 6. Is the accommodation unreasonable
 7. Initiate and carry out an interactive process with employee.
 - A. Identify necessary verification
 - (1) The Oregon program is confidential
 - (2) You cannot call and check on the status of your employee
 - (3) You can require the employee to provide authorization to verify the card
 - (4) Make sure you understand Oregon's program
<http://www.dhs.state.or.us/publichealth/mm/index.cfm>
 8. Document your processes and decision making.

This roadmap is intended to be an employer's guide to use in considering how to evaluate legal issues that arise in dealing with employees who have medical marijuana authorization.