

## MDS Alert

### Policies and Procedures: Don't Overlook Employee Marijuana Use

**Federal regulations conflict with state laws, which may leave everyone a bit confused.**

Hard and fast rules about marijuana use becomes a bit stickier when it comes to employees. Different states' legislation means that marijuana or its derivatives may be legal for adults to use in some situations - generally, outside of work- and you may be wondering what that means for employees on your clock. Crafting thoughtful and comprehensive policy around the reality of marijuana presence and usage is especially crucial if those employees are responsible for delivering care, interacting with residents or families, or keeping everyone comfortable and safe.

If you know that your state allows recreational marijuana use, look to your individual state's legislation for specifics. As an example, Pennsylvania's Medical Marijuana Act appears to take a fair, common-sense approach to protecting both employers and employees in the sticky subject of marijuana usage; a key point seems to be the sanctity of the workplace.

"Under the Pennsylvania Medical Marijuana Act, it is unlawful for an employer to "discharge, threaten, refuse to hire, or otherwise discriminate or retaliate against an employee [...] solely on the basis of such employee's status as an individual who is certified to use medical marijuana." § 10231.2103(b)(1)," says **Richard L. Holzworth**, litigation associate at **Fox Rothschild LLP** in its Pittsburgh, Pennsylvania office.

Pennsylvania legislators give a nod to the generally accepted viewpoint that active marijuana usage affects performance and can contribute to less-than-peak work if used while on the clock.

"However, nothing [in] the law prevents an employer from disciplining an employee who is under the influence of marijuana (regardless of the source of the marijuana) or for working while under the influence of marijuana when the employee's conduct falls below the standard normally accepted for that position. § 10231.2103(b)(2). In other words, employers cannot take an 'adverse employment action' simply because an employee has been certified by a physician to use marijuana products, but employers are not obligated to tolerate use of marijuana or substandard performance because of marijuana. Moreover, employers are not required to accommodate the use of marijuana products in the workplace," Holzworth says.

**Bottom line:** For healthcare practitioners and facilities, following federal law is probably safest when establishing marijuana policies that affect employees. Providing healthcare services and a homelike atmosphere to residents who may be uncomfortable or confused is already a demanding and delicate endeavor.

**Resource:** To find out whether your state has rules and regulations concerning medical or recreational marijuana, you can visit a continually updated list here: <https://medicalmarijuana.procon.org/view.resource.php?resourceID=000881>.