



GUIDE FOR EMPLOYERS

MARIJUANA AND OTHER SUBSTANCES OF USE IN THE WORKPLACE

1. Under the Maine Medical Use of Marijuana Act (MMUMA) –
 - “an employer may not refuse to employ or otherwise penalize a person solely for that person’s status as a qualifying patient...”; however,
 - The MMUMA does not require “an employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana.”
2. Drug tests for marijuana typically show levels in a person’s system well after the “effects” wear off, so if marijuana is legalized, employees may fail a drug test and yet not have used marijuana while at work and not have a level in their system that causes impairment.
3. Employers’ policies may require that employees not use marijuana or other substances of use while at work and that they may not come to work impaired even if their use is “legal.” Employers can take appropriate disciplinary action when company policies or state/federal substance use laws are violated. Other rules related to unemployment, treatment and counseling may also apply.
4. Under current unemployment employee misconduct presumptions, use of “illegal” drugs may be considered misconduct; it remains unclear, however, if marijuana were to be “legalized” on a state level but remained illegal on a federal level, how that presumption would be interpreted. This may require a statute change to clarify.

MDOL Recommendations

1. Employers should first establish a drug-free workplace policy (DFWP) that articulates their requirements and expectations of employees regarding substance use and impairment while in the workplace.
2. Employers who wish to conduct substance abuse testing may also develop a drug testing policy for approval by MDOL. See www.maine.gov/labor/labor_laws/substance_abuse_testing for more information about the policies and the testing law. The Department provides guidance and written templates to employers who wish to develop either a drug-free workplace policy or any drug testing policies.
3. With approved policies in place, employers may conduct the following types of drug testing:
 - Pre-employment (applicants)
 - Employee Probable Cause (reasonable suspicion)
 - Employee Random
 - Employee Arbitrary (e.g. on an anniversary date)

Based on studies done in 2015, MDOL is shifting its emphasis from drug testing for specified substances to encouraging employers to detect and respond to impairment in the workplace regardless of its cause, in order to protect employees from harming themselves and others at work.

MDOL, in collaboration with DHHS-SAMHS, is developing a program to train employers to detect and respond to impairment in their worksites. This will be a workplace adaptation of certain protocols used by Drug Recognition Experts in the law enforcement community and is expected to be offered in early 2017.

MDOL is working with other states that have already enacted some form of legalization and/or medical use to identify best practices for both employers and employees.

For more information, contact the Bureau of Labor Standards at 207-623-7900 or mdol@maine.gov (TTY users dial Maine Relay 711).