

California Assembly Bill Would Protect Employees Who Use Medical Marijuana

Legal marijuana is here to stay in the Golden State, but that doesn't mean employers have to be thrilled about their employees using it. Quite the contrary, at this point California employers have the right to uphold a zero-tolerance policy against cannabis users, whether or not their employees have doctors' recommendations that allowed them to obtain a medical card. However, that may be changing soon.

Assembly Bill 2069 (AB 2069) would add a new class of protected persons to the California Fair Employment and Housing Act: medical marijuana cardholders.

Medical ID card would offer employees limited protections

The measure would "prohibit an employer from engaging in employment discrimination against a person on the basis of his or her status as, or positive drug test for cannabis by, a qualified patient or person with an identification card."

In addition to the bill's proposed amendment, California employers may not discriminate against individuals because of "race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender identity, gender expression, age, sexual orientation, or military and veteran status."

The subjective "impairment" still open to debate

However, AB 2069 would not give individuals with the requisite card carte blanche to behave any-which-way while under the influence. The bill does not protect employees who are "impaired on the property or premises of the place of employment or during the hours of employment because of the use of cannabis." This, however, begs the question of what the open-to-interpretation "impairment" would look like in this scenario.

Although recreational cannabis is now permitted in California, AB 2069 does not offer protection for employees using marijuana recreationally.

A Committee vote has already put wind under the bill's wings, but the specific language within it is undergoing revision by legislators, so the measure is on hold at the moment.

Health insurance cards meshing with medical marijuana cards . . . is it mere fantasy?

The Golden State isn't alone in exploring legislation that protects medical cannabis users from workplace discrimination. As marijuana use becomes more widely accepted overall, the pressure for employers to adopt a new mindset increases as well.

With 29 states plus the District of Columbia offering medical marijuana to its residents, and with cannabis often used for pain management (without the great risks that opioids present), some healthcare industry experts even predict that medical marijuana may appear on the list of allowable prescriptions in some health plans in the not-too-distant future.

But other experts might see covered cannabis as pie-in-the-sky thinking. They point to the fact that no matter how wide the

acceptance for marijuana expands, it's still classified as a Schedule I drug on the federal level (alongside substances like heroin, LSD, and ecstasy). And Attorney General Jeff Sessions has not kept his disdain for marijuana a secret, saying, "Good people don't smoke marijuana," which means that classification is not likely to be softened in the duration of the Trump administration. That may also mean that health insurers wouldn't want to risk violating federal law while offering state-compliant employers coverage for medical marijuana.

But back to the more optimistic forecast:

Michele Hibbert-Iacobacci is head of information management and support for Mitchell Casualty Solutions in San Diego. She's also the co-author of a white paper that addresses healthcare reimbursement for medical cannabis. She wrote: "I don't see how this train will stop rolling. The [marijuana] industry is huge. It employs a lot of people. They just have to show that its use is safe from a medical perspective."

This article is provided for educational purposes only and is not offered as, and should not be relied on as, legal advice. Any individual or entity reading this information should consult an attorney for their particular situation. For more information/questions regarding any legal matters, please email info@nelsonhardiman.com or call 310.203.2800.