

# When the Smoke Clears: An Exploration of Medical Marijuana Use and Ohio's Workers' Compensation Laws

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- ❑ Current status of medical marijuana laws in Ohio
- ❑ Compliance with federal laws/regulations and protections for employers under the Ohio medical marijuana law
- ❑ Impact of medical marijuana on workers' compensation claims
- ❑ Drug-free workplace policies in the era of medical marijuana
- ❑ Employee handbook considerations in the era of medical marijuana

## Current Status of Legalization of Medical Marijuana

- House Bill 523 legalized medical marijuana in Ohio – effective September 8, 2016
- Under the law, Ohioans may purchase and use medical marijuana if they have a qualifying medical condition and have a recommendation from a physician licensed in Ohio
- Patient and Caregiver registration
  - 35,162 Registered patients with recommendations as of 05/31/2019, per Program Update of Ohio Medical Marijuana Control Program (<https://medicalmarijuana.ohio.gov/programupdate>)

- Qualifying Medical Condition – Ohio Rev. Code 3796.01(A)(6), includes list of conditions for which a physician may recommend medical marijuana
- Conditions relevant to Workers' Compensation include:
  - Pain that is either chronic or severe OR intractable
  - Post-traumatic stress disorder
  - Spinal cord disease or injury
  - Traumatic brain injury
- Recently, the State Medical Board postponed a vote to add anxiety as a qualifying condition – the Board also rejected petitions to add depression, insomnia and opioid use disorder as qualifying conditions

## Employer Protections in Ohio's Law

- Rights of the Employer are explained in Ohio Rev. Code 3796.28; for example:
- Nothing in the law requires an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana
- Nothing in the law prohibits an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, privileges of employment because of that person's use, possession, or distribution of medical marijuana
- Nothing in law interferes with any federal restrictions on employment

## Impact of Medical Marijuana on Workers' Compensation Claims

- Minimal, if any.....for now.
- BWC Fact Sheet Available at <https://www.bwc.ohio.gov/downloads/blankpdf/medmarijuanaimpact.pdf>
- Law does not require BWC or employers to pay for medical marijuana; BWC is restricted under Ohio/federal law because drugs covered by BWC are limited to those that are approved by the U.S. Food & Drug Admin. Marijuana is not approved.
- Rebuttable presumption statute is still in effect and applies regardless of whether marijuana was used recreationally or as recommended by a physician

## Drug-free Workplace Policies

- Under Ohio Rev. Code 3796.28, nothing in the medical marijuana statute “affects the authority of the administrator of workers’ compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program....”
- Ohio Rev. Code 3796.28(B) preserves discharge for just cause when an employee is terminated for violation of an employer’s drug-free workplace policy, zero-tolerance policy or other formal program or policy regulating the use of medical marijuana.



## Update Your Drug Policy

- Employers should update the company's drug-free workplace policy to reflect possible medical marijuana use and to provide notice to employees that Ohio's medical marijuana law does not change company policy.



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