Medical marijuana use and testing positive? Denied employment? [1]

Dear Alice,

Can you be denied employment for having a medical marijuana license and showing a positive or failing a drug test?

Answer

From sea to shining sea, individual states in the U.S. are sorting out laws about medical marijuana (and in some cases recreational marijuana). Your question is one that people are probably wondering about more and more, considering medical marijuana is now legal in 21 states (and counting). Here’s the skinny: for employees who are prescribed and use medical marijuana, the rule of thumb in the legal sphere has generally been “better safe than sorry.” This means that many employers have decided that there’s too much risk in allowing exceptions to failed drug tests, even for those with a medical marijuana license.

Why are employers opting for the zero-tolerance approach? To put it simply, there appears to be a type of catch-22 with marijuana laws: any marijuana use at all is still illegal under the federal government’s Controlled Substances Act (CSA), regardless of individual states’ laws. However, the federal government has made statements that it plans to let states do their own thing and may not go after medical marijuana users in states that have chosen to legalize it (as long as the users are following the states laws regarding medical marijuana use). As such, it seems unlikely you’d be arrested under federal law as long as you have a medical marijuana license. However, this catch-22 also means that employers aren’t required to provide protections for employees. Long story short: if you test positive for marijuana on a drug test, it’s still possible that your employer could choose to fire or penalize you.

While most of the situations on record have been handled on a case-by-case basis in each state and with each employer, here are some tidbits to keep in mind:

- Some states have taken steps to make sure their medical marijuana laws include protections for employees. For example, Rhode Island, Montana, Arizona, and Delaware crafted their laws to forbid employers from firing legal medical marijuana users simply because they have a medical marijuana license. In New York, medical marijuana use is actually classified as a disability under anti-discrimination laws, so registered users cannot be discriminated against just because of their status as a qualified patient.
Individual employers are still the ones who will decide whether marijuana can be used at your actual workplace or not. So, even if you live in one of those states with protections for employees, your employer could still choose to stop you from using it while at work or just before coming to work if they had concerns about impairment while performing work duties.

If you work for the federal government or your company contracts with the federal government, medical marijuana use is definitely not allowable, no matter what state you’re in or what protections you have. This is because federal law (the Drug-Free Workplace Act) trumps any state laws.

If you or someone you know is dealing with this situation, a good place to start might be to research your employer’s specific policies on drug testing, or even talk to your employer or human resources department about your situation, if you feel comfortable. It’s possible some jobs might be a better fit for someone who uses medical marijuana than other jobs. Also, some employers may offer more protections than others.

This topic will surely continue to be on everyone’s radar as policies and laws morph, so keep your eyes peeled for news in your area. The times, they are a-changin’! [4]

Alice!
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