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Workplace Issues Related to the Decriminalization/Legalization of Marijuana

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State-Sanctioned Marijuana Use Is Increasing

- A number of states have enacted laws to legalize medical marijuana or overall marijuana use (for more details, see ProCon.org, 2014, April 25). Medical marijuana use is already legal in 21 states and the District of Columbia. The rate of state approvals for medical use is rising. In at least 17 states, bills also were introduced or initiatives begun to legalize marijuana for adult use along the lines of alcohol use, the approach used in Colorado and Washington. Most of those efforts are considered unlikely to pass the respective state legislatures during 2014.

Marijuana Laws – Federal, State, & Local

- **Federal, state, local laws/policies vary**
- **Inconsistent federal prosecution**
- **Employees confused about workplace policy & changes in law**
- **Employers need to underline workplace policy & testing issues**

ONDCP Definition Legalization/Decriminalization

- Legalization—Laws/policies making possession/use of marijuana legal under state law.
- Decriminalization—Laws/policies adopted in states or localities reducing penalties for possession/use of small amounts from criminal sanctions to fines or civil penalties
- Medical Marijuana—State laws which allow an individual to defend against criminal charges of marijuana possession if (s)he can prove a medical need under state law.

- Source: Office of National Drug Control Policy (ONDCP). (n.d.). Answers to frequently asked questions about marijuana. http://www.whitehouse.gov/ondcp/frequently-asked-questions-and-facts-about-marijuana#difference, link verified 8/27/2014.

Legalization

Legalization is the process of turning a particular action into being legal. All the punishment and consequences attributed to the act are no longer in effect. Legalization not only removes criminal penalties, but also it allows marijuana to be a new source of taxation and control by local and state government and of federal business income and payroll taxes.

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Decriminalization

- Decriminalization means that the criminal penalties attributed to the act are reduced. Decriminalization of marijuana means that individuals found committing the act would be exposed to lesser penalties like a fine or a special permit. Most places decriminalizing marijuana have civil fines, drug education, or treatment in place of incarceration or criminal charges for possession of small amounts of marijuana or have made various marijuana offenses the lowest priority for law enforcement.

Federal and State Law Variance & Enforcement Issues

- Marijuana continues to be listed in the nation's Controlled Substances Act (CSA). Federal courts hold that a state's adoption of medical marijuana provisions is irrelevant in a federal prosecution
- In an August 29, 2013 memorandum, the Department of Justice clarified the federal government's prosecutorial position and stated that the federal government would rely on state and local law enforcement to "address marijuana activity through enforcement of their own narcotics laws."
- Thus, DOJ deferred to the states on the matter.

Workplace Legal Issues

- Courts continue to uphold a company's right to maintain a drug-free work place.
- A survey of 300 employers within Colorado found that most continued to uphold their drug-testing policies and to screen for marijuana usage among their employees with the recent changes to the state's legalization law.
- Potential and current employees often are unsure of their employer's attitude and actions regarding marijuana policies.
- Workplaces need to look at this issue when updating their drug-free workplace policies.

FEDERAL AND STATE LAW VARIANCE AND ENFORCEMENT ISSUES

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Workplace Policies & Marijuana

- When jobs require “being fit for duty”, conventional wisdom is that employees are responsible for asking their health care provider about likely effects. Unlike with prescription drugs, for medical marijuana, health care providers are unlikely to know.
- A meta-analysis (Elvik, Accident Analysis & Prevention, 2013) estimates odds of a crash when driving after smoking marijuana are 1.26 times sober risk. NHTSA has estimates under review.
- Employees should provide the employer information concerning particular work-related restrictions the health care provider believes they face.
- Where recreational marijuana is legal, drug-free workplace policies need to provide clear guidelines concerning the use of marijuana.

Example: Snyder's Lance Inc.

Manufacturer with approximately 5,000 employees based in Charlotte, North Carolina.

The company updated its drug-free workplace policy to instruct employees that marijuana remains banned for employees, no matter if they travel through or live in states with legalized marijuana.

Affirmed that if marijuana is legalized for recreational use, employees are prohibited from using it at work. Policy noted that those on prescribed medical marijuana are not allowed at work while being treated, similar to the company's policy on narcotic prescriptions (Harrison & Wojcik, 2014, April 27).

Conclusion & Considerations

- Drug Testing will continue to face difficult and challenging issues related to marijuana.
- As states modify marijuana laws, non Federal workplaces will need to review and possibly adjust their drug free workplace policies.
- Discussion needs to be continued about current and future research, policy, and legal issues related to the changing landscape of State marijuana laws.