

Human Resources

Is Your Workplace Prepared for Legal Marijuana?

CHRISTINA SMITH has Crohn's disease, a gastrointestinal issue that can be debilitating. Her doctor prescribed marijuana to treat the symptoms, as allowed by state law.

When she interviewed for a job that required a drug test, she informed her would-be supervisor of her condition and prescription. The supervisor assured her that this would not be a problem, and she got the job.

After her first day of work, a representative of her employer's human resources department called her at home and fired her for failing the drug test.

She sued the company for discrimination, and in July 2017 the Massachusetts Supreme Judicial Court agreed, holding that a lower court was mistaken when it threw out her complaint.

For decades, employers have tried to keep their workplaces drug-free, relying on federal laws against marijuana. However, in recent years more than half the states have legalized the drug for medical purposes, and several, like California, have legalized its recreational use.

This split between federal and state laws has left many employers in a quandary: How to balance their interests against those of employees who wish to use a product that is legal under state law?

Employers have responsibilities to maintain safe workplaces, and many state laws recognize that fact.

Massachusetts law specifically exempts employers from having

to permit or accommodate marijuana consumption in the workplace, and it affirms their rights to restrict its use in the workplace.

Employers in all states still have the right to test their employees for drug use and take disciplinary action they feel is warranted.

However, where medical marijuana is legal and an employee has a valid prescription for it, disciplinary action against them could result in a claim of discrimination or wrongful termination.

State courts have been inconsistent on these claims; the employee won the case mentioned previously, while a 2008 California Supreme Court decision reached the opposite conclusion.

Some states, such as New York, protect medical marijuana users from discrimination. Employers with operations in multiple states should verify what protections, if any, those states require. They should also make an effort to stay current on changes to the law and court decisions.

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Sexual Harassment

New Law Expands Training Requirements

GOV. JERRY Brown has signed into a law a measure that expands the anti-sexual harassment training requirements for California employers.

As you probably know, current law requires employers with 50 or more workers to hold two hours of anti-sexual harassment training for supervisors every two years. The law and subsequent regulations by the California Department of Fair Employment and Housing outline the training requirements.

The new law, SB 396, expands the subjects of that training to also include harassment based on gender identity, gender expression and sexual orientation.

The training must include specific examples of such harassment. This portion of the training must be presented by trainers with knowledge and expertise in these areas.

SB 396 also requires employers to display a poster regarding transgender rights prepared by the California Department of Fair Employment and Housing.

Current law on training format and content

In regard to format, training may be provided in a classroom setting with an in-person trainer, through “e-learning” programs or via online seminars.

The content of classroom and online seminar training programs must be created and taught by a trainer who has expertise in current instructional best practices.

An e-learning program must provide a link to a trainer who can answer a trainee’s questions within two business days.

In regard to content, the training and education must include information and practical guidance about federal and state provisions on the prohibition against and the

prevention and correction of sexual harassment, as well as remedies available for victims of sexual harassment.

Other required components include questions that assess learning, “skill-building activities” that assess the supervisor’s application and understanding of training content, and numerous hypothetical scenarios that include discussion questions.

The training should include practical examples of what is considered sexual harassment, along with instruction about the prevention of harassment, discrimination and retaliation. ❖



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In ‘Legal’ States Put in Place a Flexible Policy for Your Staff

Common sense policies in ‘legal’ states

Some employers, particularly in those states where recreational use is legal, may choose to take a more flexible attitude toward the drug. If so, here are some changes businesses may want to consider making to their policies:

- Defining the specific terms in the policy, such as “work hours,” “cannabis use,” and “under the influence.” Marijuana can be eaten in baked goods as well as smoked, so the meaning of “use” should be clear.
- Specifically explaining the employer’s procedures for

investigating and the penalties for using the drug.

- Requiring employees who want protection under the Americans with Disabilities Act to self-disclose their use, and protecting them from reprisal.
- Differentiating tests for other drugs, such as cocaine, from tests for marijuana.
- Having a program to refer employees with drug abuse problems for medical treatment.
- Educating employees on the health issues of marijuana use and the effect it can have on work performance. ❖





Workers' Comp

Construction Dual Wage Threshold Changes

AS PART of its annual benchmark rate filing, the Workers' Compensation Insurance Rating Bureau of California has also recommended that the following dual-wage class thresholds change for 2018.

For some construction classes, the Rating Bureau sets wage thresholds for which different rates apply due to significant differences in claims and claims cost rates for workers who earn less and more than the threshold.

Typically, higher wage workers in these classes have fewer and less costly claims compared to their counterparts who are paid less than the threshold.

The Rating Bureau updates the threshold when it notes changes in these costs. ❖

Code	Description	2017 Threshold	2018 Threshold
5190/5140	Electrical Wiring – within buildings	\$30.00	\$32.00
5201(1)/5205(1)	Concrete or Cement Work – pouring or finishing of concrete sidewalks, driveways, patios, curbs or gutters	\$24.00	\$25.00
5201(2)/5205(2)	Concrete or Cement Work – pouring or finishing of concrete floor slabs, poured in place and on the ground, and concrete slab-type foundations, for other than concrete buildings or structural steel buildings of multi-story construction	\$24.00	\$25.00
5403/5432	Carpentry – including the installation of interior trim, builders finish, doors and cabinet work in connection therewith	\$30.00	\$32.00
5446/5447	Wallboard Application – within buildings	\$33.00	\$34.00
5474(1)/5482(1)	Painting, Decorating or Paper Hanging – including shop operations	\$24.00	\$26.00

Code	Description	2017 Threshold	2018 Threshold
5474(2)/5482(2)	Waterproofing – other than roofing or subaqueous work when performed as a separate operation not a part of or incidental to any other operation	\$24.00	\$26.00
5474(3)/5482(3)	Painting – water, oil or gasoline storage tanks	\$24.00	\$26.00
5484/5485	Plastering or Stucco Work	\$27.00	\$29.00
5552/5553	Roofing – all kinds	\$23.00	\$25.00
5632/5633	Steel Framing – light gauge	\$30.00	\$32.00
6218(1)/6220(1)	Excavation – N.O.C.	\$30.00	\$31.00
6218(2)/6220(2)	Grading Land – N.O.C.	\$30.00	\$31.00
6218(3)/6220(3)	Land Leveling – grading farm lands	\$30.00	\$31.00
6307/6308	Sewer Construction – all operations	\$30.00	\$31.00
6315(1)/6316(1)	Water Mains or Connections Construction	\$30.00	\$31.00
6315(2)/6316(2)	Gas Mains or Connections Construction	\$30.00	\$31.00





Workplace Safety

Fall Protection Training a New OSHA Priority

THERE'S A NEWCOMER to OSHA's top 10 list of violations that it cites every year: Fall Protection - Training Requirements..

While physical fall protection violations, like failing to install guard-rails or provide fall protection equipment continue to feature, this is the first time that a training requirements violation has made it into OSHA's preliminary list of 2017's most often cited violations.

The showing reflects OSHA's increasing commitment to reduce injuries and deaths from trips, slips and falls, which are the most common cause of workplace injuries in the U.S.

Overall, OSHA issued about the same number of citations in fiscal year 2017, which ended Sept. 30, as it did in 2016, except for the new addition, which pushed Electrical – General Requirements off the list.

10 MOST-CITED OSHA VIOLATIONS

- Fall protection: 6,072
- Hazard communication: 4,176
- Scaffolding: 3,288
- Respiratory protection: 3,097
- Lockout/tagout: 2,877
- Ladders: 2,241
- Powered industrial trucks: 2,162
- Machine guarding: 1,933
- Fall protection - training requirements: 1,523
- Electrical - wiring methods: 1,405

Training done right

There are four levels of fall protection training:

- **Awareness** – Awareness-level training generally consists of brief, on-site sessions that provide an overview of fall hazards, fall protection equipment, and how it should be used
- **Authorized-user** – Have any worker exposed to fall hazards undergo authorized-user training. This training is specialized for the type of job and its specific fall hazards.
- **Competent person** – The competent person needs a higher level of training and knowledge because he or she should be able to address any fall hazard situation in the organization, evaluate it, and recommend solutions. This employee also needs to recognize whether other workers are misusing equipment or working in unsafe conditions
- **Qualified-person training** – This person typically has a specialized degree or training that qualifies him or her to address technical situations, such as making certified anchorage points or designing horizontal safety systems. The employer should designate someone who has sufficient training and a reasonable level of knowledge in fall protection in order to be dedicated as the on-site “qualified person.”

Make sure to log it all

Keep accurate and detailed records to show that you vetted the training organization before hiring them.

OSHA often requires detailed training records, such as dates and employee attendance. ❖

