

# Medicinal Marijuana and Prescription Drugs

## How to Balance Medical Issues with Worker Safety on the Jobsite

By Matthew DeVries

Depending on where you live, owners of construction companies may have a new dilemma to address with their employees: medicinal marijuana. The conflict puts the company's safety and employment policies, often dictated by federal law, directly up against what may be an individual's rights under state law. According to a recent Wall Street Journal article, 14 states and the District of Columbia have laws or constitutional amendments that allow patients with certain medical conditions, such as cancer, glaucoma, or chronic pain, to use marijuana without fear of prosecution. Last year, the Obama administration directed federal prosecutors not to bring criminal charges against marijuana users who follow their states' laws.

Such policies can put employers in a difficult position, trying to accommodate state laws on medical marijuana use, while at times having to enforce federal rules or company drug-use policies that are based on federal law. That is precisely the problem for today's construction employers, many of whom have rigid drug-free work policies that include strict prohibitions against:

- the use, sale, manufacture, distribution, dispensing, and possession of illegal drugs and drug paraphernalia;
- the abuse of prescription and/or over-the-counter (OTC) drugs; and
- the use and/or abuse of alcohol, or reporting to work while under the influence of alcohol or any illegal drug.

In many instances, a violation of these provisions allows the construction employer to discipline the employee, including and up to termination of employment.

**But what about those states that allow use of medicinal marijuana?** It will depend entirely upon state law and the courts' interpretation of that law. For example, the courts in Oregon, California, Montana, and Washington, D.C. have all



ruled that employers have a right to fire medical-marijuana patients for using the drug. However, the courts in Maine and Rhode Island have held that an employer cannot penalize an employee simply because of his status as a medical marijuana patient. In Michigan, the law says that registered patients shall not be "denied any right or privilege" or face disciplinary action at work because they use pot. There is an exception where employers do have the right to terminate workers who use marijuana on-site or come to work high.

**What other laws apply to employees under the influence of medication?** Each state is different, but the Drug Free Workplace laws in Tennessee are an example of how the industry can respond to medicinal uses on the jobsite. Under that statute, if an employee is involved in an accident and there is proof of intoxication by drugs or alcohol, there is a presumption that the intoxication legally caused the accident. Also, if the injured employee refuses to submit to a drug test, then it is presumed that the proximate cause of the injury was the influence of drugs. Under new amendments to the laws, the injured employee must prove by "clear and convincing" evidence that the intoxication was not the proximate cause of the injury.

**What can you do to protect your company?** The best way to protect your construction company's interests is to follow three quick tips: (1) check your state's law on the use of medicinal marijuana and prescription drug use; (2) review your employment and safety policies to make sure you have adequate protection for your employees and to maintain jobsite safety; and (3) make sure to train your management to observe employee behavior. The real danger is having an employee **come to work "high"** or in an intoxicated state. ■

### ABOUT THE AUTHOR

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