

TOOLBOX TALK #45

MARIJUANA USE AT WORK – PART 2

As more and more states enact laws that decriminalize, and in some cases, legalize marijuana use, how does a contractor maintain a drug-free workplace?

Contractors are increasingly frustrated by so-called marijuana reform legislation. More and more states are enacting laws that decriminalize, and in some cases, legalize marijuana use. Approximately 20 states now protect medical marijuana use to some extent. Half a dozen states (and that number is on the increase) now permit recreational marijuana use. Yet, marijuana remains a controlled substance illegal under federal law. One contractor recently raised the following questions:

- How do business owners maintain a zero-tolerance policy on drug and alcohol use?
- How can contractors maintain a drug-free workplace if their ability to conduct pre-employment and random drug testing is compromised by state legislation?
- What steps are contractors taking in states that have legalized recreational marijuana to find drug-free employees?
- How do contractors avoid wrongful termination litigation?

These are all good questions. Unfortunately there are not good answers for all of them.

Medical use

In states that have sanctioned medical use of marijuana, the situation is slightly different. In most cases, the individual will indicate before testing that he or she is a medical marijuana user, and usually will present a medical card issued by the state of documentation from a physician. A state court once held that an employee who acknowledged medical use of marijuana and was terminated for a positive drug test could claim disability discrimination. In essence, the court said that the employer must go through the disability claim process, using the reasonable accommodation analysis, before taking final action.

The contractor would have to prove that the individual's medical marijuana use would impair performance and pose a significant safety risk to the public, coworkers and/or the public. Close cooperation with an occupational medical clinic is paramount. Employers need to know their state's law.