WHAT THE NEW MEDICAL MARIJUANA LAW MEANS FOR ILLINOIS BUSINESS OWNERS

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SEPTEMBER 2013

Last month, the Illinois legislature passed a bill authorizing the medicinal use of marijuana under certain specifically defined situations. Under the "Compassionate Use of Medical Cannabis Pilot Program Act" (the "Act"), registered users of medicinal marijuana are allowed to purchase up to 2.5 ounces of marijuana every 14 days from a state licensed dispensary. However, in certain limited situations, registered users are permitted to purchase more during a 14 day period. The Act becomes effective on January 1, 2014 and will provide protections for the medical use of marijuana to certain qualified patients.

The Act contains specific provisions regarding the workplace that business owners and operators need to understand. Basically, an employer may not penalize an employee because that person is a registered qualifying patient entitled to use medicinal marijuana. Nor can an employer be penalized for employing a registered qualifying patient.

The Act raises several questions and issues for employers regarding the prescribed use of marijuana by employees while on the job. *Here are a few key facts:*

1. The law does not prevent a business from restricting or prohibiting the medical use or storage of prescribed marijuana on its property.
2. An employer is not prohibited from disciplining an employee who is a registered qualified patient if that employee violates a properly enacted work-place drug policy.
3. Health insurers are not required to reimburse a person for the costs of medicinal marijuana.
4. An employer may adopt reasonable rules relating to the use of medical marijuana.
5. Employers are not prohibited from enforcing a policy concerning drug testing, zero-tolerance, or a drug-free work place, provided the policy is applied in a nondiscriminatory manner.
6. An employer may consider an employee impaired when manifesting specific symptoms defined in the Act that lessen performance of the employee's job functions.

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Employers need to become familiar with the Act's impact on its day-to-day business operations. Despite some confusion and contradictions presented in the Act, employers should understand that: **1)** an employer is not required to allow an employee to possess or use medical marijuana while at work; **2)** an employer is not required to allow an employee to work if the employer believes, in good faith, that the employee is impaired by the use of marijuana or has used marijuana during that employee's designated work hours; **3)** even though the law allows an employer to prohibit the use of medical marijuana on the employer's premises or during an employee's designated work hours, registered users who test positive on a drug test may not be disciplined in the same manner as those who are not registered users; and **4)** an employer cannot discriminate against an applicant who tests positive on a pre-employment drug screen if the applicant is a registered user.

An employer may, however, discipline or refuse to hire a registered user for failing a drug test if the employer risks losing a federal contract or funding.

Some challenges that employers will face not only include understanding the law, but also determining how to apply it under varied circumstances. Business owners should be on their toes about the Act's requirements as well as prescribing and implementing employee policies complying with the Act. Luckily, employers have a few months to learn and understand the Act before it becomes effective.

About Hiten R. Gardi:

Hiten R. Gardi founded the Schaumburg law firm in 2003 primarily focusing on commercial and residential real estate. In 2004, Thomas E. Haught joined the firm and it became Gardi & Haught, LTD., specializing in real estate law, litigation, immigration, divorce, estate planning and corporate law. Gardi is a graduate of Loyola University and John Marshall Law School.

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