

Editor's Note: Association Newsletter Article – February 2010

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Medical Marijuana: Things for Employers to Consider

In November 2000, Colorado voters approved Amendment 20, which authorizes patients with certain debilitating medical conditions to obtain and use marijuana. As the number of medical marijuana users in the state has grown, Pinnacol Assurance has received many inquiries from policyholders about workers using medical marijuana and the law's impact on workers' compensation.

Here are some of the questions we've received. The answers are based on the best information we have available. However, from a legal standpoint, there are still many "gray areas" about the use of medical marijuana and its impact in the workplace. Pinnacol will continue to monitor this issue and provide updated information to policyholders.

We advise policyholders dealing with specific employee issues regarding medical marijuana to consult with an attorney with expertise in employment law.

Q: How does an individual become a medical marijuana patient in Colorado?

A: Because marijuana is a federally prohibited controlled substance, it is not **prescribed** by physicians in Colorado. Instead, doctors issue **recommendations** for the use of marijuana to relieve the effects of certain medical conditions. (This distinction is important in regard to workers' compensation.) Patients then provide this recommendation and an application to be included on the medical marijuana registry to the Colorado Department of Public Health and Environment. If the application is accepted, a medical marijuana identification card is issued to the applicant.

Q: Does Amendment 20 allow medical marijuana patients to smoke medical marijuana at work?

A: No. Amendment 20 specifically states that nothing in the medical marijuana law "requires any employer to accommodate the medical use of marijuana in any work place."

Q: Is Pinnacol obligated to pay for medical marijuana for an injured worker?

A: If marijuana is recommended as treatment for an injured worker, we review the recommendation as we would any other treatment recommendation: Has it been made by an authorized treating physician? Is it for a condition that is related to the work injury? Is it reasonably necessary?

Q: If an injured worker tests positive for marijuana immediately following an injury, can Pinnacol reduce nonmedical benefits by 50 percent on the basis of intoxication or violation of a safety rule?

A: Because medical marijuana qualifies as a “not medically prescribed controlled substance,” the presence of marijuana in a worker’s system allows Pinnacol to reduce indemnity benefits for intoxication or for violation of a safety rule.

Q: What steps can employers take regarding medical marijuana use at work?

A: Employers can review their drug policies to determine if the policy:

- Prohibits employees from possessing, selling and using drugs at work
- Prohibits being under the influence or having detectible amounts of illegal drugs in their system while at work

Q: What about offering modified duty to an injured worker who is on the state’s medical marijuana registry?

A: If an injured worker has been released to a modified duty job in compliance with Rule 6, an employer may offer the modified duty job and modify or terminate temporary disability benefits regardless of whether the injured worker legally uses medical marijuana. This does not mean that an employer must allow an injured worker to be under the influence of marijuana while performing the modified duty.

This question touches on one of the biggest issues surrounding Colorado’s medical marijuana statutes: How the law affects the accommodations employers are required to make for employees covered under the Americans with Disabilities Act and state disability laws. Frankly, Colorado courts have yet to address this issue; as such, Pinnacol can not offer a recommendation on this. Again, consultation with an attorney with expertise in employment law is advised.

If you have any questions concerning this issue, contact your Pinnacol marketing manager.

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