

Nip It In The Bud: Employer Considerations Following The Debut Of Medical Marijuana In Illinois

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Medical marijuana dispensaries in Illinois have officially opened their doors to patients who qualify for the drug under the Compassionate Use of Medical Cannabis Pilot Program Act (the Compassionate Use Act). The program will be in effect for four years, at which point Illinois officials will determine whether the approved uses should be restricted or expanded. While Illinois' Compassionate Use Act is one of the most restrictive of the 23 states that legalized the use of medicinal marijuana, employers—particularly those with zero-tolerance policies—should be vigilant in preparing for compliance with the new law. As we reported [here](#), the Illinois' Compassionate Use Act includes a prohibition on discrimination against an employee who is a registered patient under the act. This is not to say, however, that employers may not maintain a zero-tolerance policy; those policies do not violate Illinois' Compassionate Use Act so long as they are applied in a non-discriminatory way. The same holds true for restricting employees whose use may result in unsafe working conditions or increased harm to the employee or others. Employer drug testing policies are subject to the same requirement. An employer may not apply its drug testing policies in a discriminatory manner based on a registered employee's use of medicinal marijuana under the Illinois Compassionate Care Act. In other words, when an employer learns that an employee is an approved and registered user under the act, the employer may not implement periodic drug testing for that employee only. Problem solved, right? Not exactly. Even if all employer policies and procedures are applied in a nondiscriminatory manner, it is still possible that an employee with a disability who is lawfully using marijuana as a registered user under the Illinois Compassionate Use Act may request a work-related accommodation. If such circumstances were to arise, employers should seek advice as to its obligations under the Americans with Disabilities Act and/or applicable state law. In particular, such requests require an employer to make an individualized assessment to determine whether the requested accommodation is reasonable, whether the employee poses a direct threat to safety, and whether the requested accommodation can be accomplished without undue hardship. Given that the Illinois Compassionate Use Pilot Program only recently went live, now is the time for employers to review their employment policies and procedures to determine whether changes are required.

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