

Frequently Asked Questions

Arizona Medical Marijuana Act



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■ **Arizona's Medical Marijuana Act permits individuals with specified medical conditions to obtain a registry identification card from the Arizona Department of Health Services allowing them to obtain or cultivate marijuana. Arizona employers need to understand how this law impacts personnel policies. These questions and answers address areas relevant to CopperPoint Insurance Companies and its subsidiaries' policyholders, especially if the policyholder receives a drug-and-alcohol testing program premium credit. If you have a question about medical marijuana and your policy, contact CopperPoint's Contact Center, 602.631.2600 or 866.284.2694.**

Q Will CopperPoint and its subsidiary companies continue to offer the Arizona Alcohol-and Drug-Free Workplace Premium Credit to employers with employees who have been issued medical marijuana cards?

A Yes, as long as employers administer their drug-and-alcohol testing programs as required under ARS §23-493 et seq. subject to the requirements of the medical marijuana provision.

Q Will workers compensation benefits cover the purchase of medical marijuana?

A No. Although the Medical Marijuana Act does not require public or private insurance to reimburse a person for the costs associated with the medical use of marijuana, there was some legal uncertainty whether this provision also applied to workers compensation benefits. This concern became more pronounced when several courts in other states, notably New Mexico, recently held that medical marijuana is a covered medical benefit under their medical marijuana and workers compensation laws. In order to clarify the ambiguity in the Arizona Medical Marijuana Act, the Arizona Legislature passed and the Governor signed into law House Bill 2346 during the 2015 legislative session. The new law specifically states that workers compensation insurers and self-insured employers are not required to pay for the use of medical marijuana.

Q Can an employer prohibit marijuana use at work?

A Yes. The law does not protect an employee who possesses marijuana or uses it on the employer's premises or during work hours. The law also does not protect an employee who is impaired from marijuana at work.

Q What should my policy state?

A Your employment policy should state: (1) Possession or use of, or impairment from marijuana in the workplace will not be tolerated. Marijuana will be treated like any other lawfully prescribed drug that may impair an employee's functioning at work. (2) You will not tolerate any employees being impaired from drugs, legal or illegal, at work. (3) Employees should not report to work impaired. The employee should notify his supervisor of any impairment from medication that could pose a safety risk or affect the ability to work. (4) If the position is safety sensitive and the employee is a cardholder, you may take action such as not hiring the applicant or reassigning an employee from the position. Be aware the employee does not need to identify the medication or the medical condition to the supervisor, but the medical condition may be covered under ADA and/or FMLA and those processes may apply.

Q Are there exceptions to the law?

A The law allows an employer to refuse to hire or to continue employment of a cardholder if the employment of the registered qualifying cardholder would cause the business to lose a monetary or licensing-related benefit under federal law or regulations.

Q What if an applicant tests positive in a pre-employment drug test?

A Employers cannot discriminate against an applicant for medical marijuana use if the applicant is a registered cardholder. If the employee or applicant tests positive, determine whether he/she is a registered cardholder. If so, the employer cannot base the hiring decision on the applicant's medical marijuana use outside of work. If marijuana use outside of work poses a safety risk at work, the employer may be able to refuse to hire the applicant. In addition, if the position is "safety sensitive" under the law, the employer may be able to refuse to hire the applicant. This analysis can be complex, so it is recommended that you seek legal advice.

Q What if a current employee tests positive for marijuana on a drug test?

A You cannot automatically terminate the employee in most cases. Determine whether the employee is a registered cardholder. If so, and the employee was not using marijuana at the workplace and was not impaired on the job, then the employer may not terminate, discipline or discriminate against the employee. Marijuana will be treated like any other lawfully prescribed drug that may impair an employee's functioning at work. However, if the position is "safety sensitive" under the law, you may take action.

Q Can an employer terminate an employee for being under the influence of marijuana at work?

A Yes, but it is difficult to determine whether a person is under the influence of marijuana in the workplace. According to the law, "under the influence" does not include a registered qualifying patient who has a presence of metabolites or components of marijuana that appear insufficient to cause impairment. If the employer is able to document signs the employee is under the influence, and witness testimony indicates use, possession or impairment at work, you may be able to substantiate the employee is under the influence in violation of your policy.

Q If it can be proved the employee was impaired or under the influence of medical marijuana at work and the employee sustains a work injury, can the claim be denied?

A In general, the answer is "no," and it does not matter whether the employee is a cardholder. The Arizona Supreme Court has held workers compensation benefits cannot be denied if the employee was impaired at the time of an injury as long as the worker was performing some aspect of his job at the time of the injury.

Q Should employers change their drug-testing policies to comply with the law?

A Yes. Update your policies relating to drug use and drug testing to remove any language that says the employer will not hire or will terminate an employee who tests positive for marijuana. Add language to create an exception for registered cardholders. Your policy should state you do not tolerate the possession, use of or impairment from marijuana at the workplace. Also,

update your anti-discrimination policy to prohibit discrimination against employees or applicants based on their status as a cardholder.

Q What if an employee tells his manager he is a registered cardholder?

A Keep the status of applicants and employees who are medical marijuana users confidential. As with any medical information, keep any information you receive in a file separate from the employee's personnel file.

Q How can an employer verify a worker's medical marijuana card is valid?

A You can verify via the Arizona Department of Health Services' website at azdhs.gov.

Q If an employee tells the employer that marijuana is used for medical reasons, does that mean the employee has a "disability" under the American with Disabilities Act (ADA)?

A Maybe. The medical condition may constitute a disability as defined under the ADA. If it does, the employer will be required to engage in the interactive process to discuss with the employee if reasonable accommodations are appropriate. Many of the medical conditions defined in the law are likely to constitute a disability under the ADA. Be aware the employee also may be eligible for leave under the Family Medical Leave Act (FMLA) if the condition is a "serious health condition" as defined by the FMLA.

Q What other restrictions apply to the use or position of medical marijuana?

A The law prohibits a cardholder to smoke marijuana in any public place or to possess it on a school bus, preschool, primary or secondary school or in a correctional facility. The law does not alter any existing laws prohibiting the operation, navigation or being in physical control of any motor vehicle, aircraft or motorboat while under the influence of marijuana.

Direct questions to CopperPoint's Policy Contact Center at 602.631.2300 or 800.231.1363
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A.M. Best assigned CopperPoint and its subsidiaries an A- Excellent XII with a "stable outlook"