

WEED IN THE WORKPLACE/ IMPACT OF MARIJUANA IN THE WORKPLACE

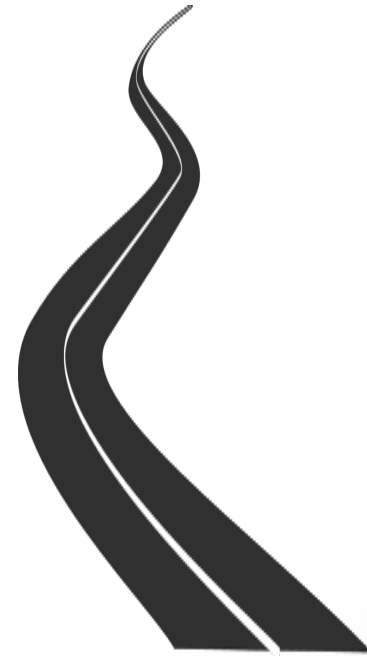
KRISTINE E. KWONG, ESQ



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Roadmap of Marijuana

- Legal history of marijuana
- Criminalization of marijuana
- Decriminalizing medical use at state level
- Relaxed enforcement at federal level
- Confusion over the impact
- Legalization of recreational marijuana

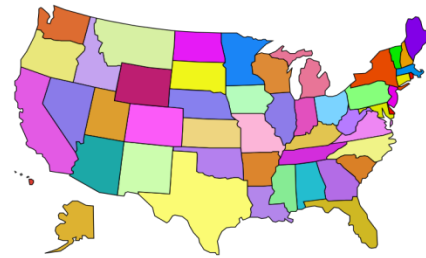


Marijuana at Work

- Medical marijuana
- Recreational marijuana
- Effects of marijuana
- Legal implication of marijuana
 - Americans with Disabilities Act
 - Drug and alcohol testing
 - Family and Medical Leave Act

Medical Marijuana

- First states legalize medicinal use of marijuana
 - California 1996
 - Alaska 1998
 - Oregon 1998
 - Washington 1998



CURRENTLY

More than 20 states



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Recreational Marijuana

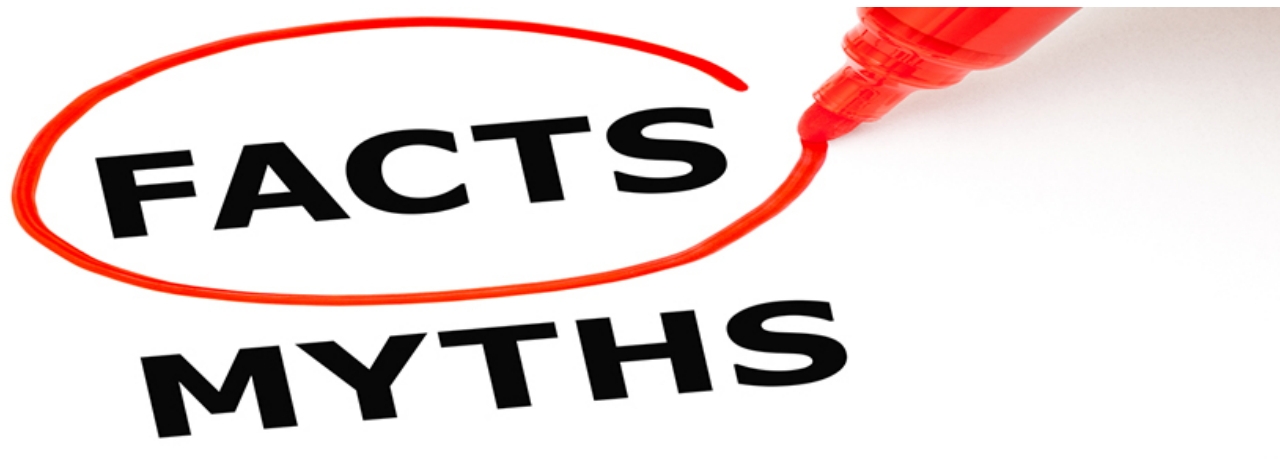
Colorado

- January 1, 2014
 - Over 21 can grow/posses for recreational use
- Second state legalize marijuana
 - Washington first
- Fiscal impact – tax revenue



Marijuana Myths

- Constitutional right to privacy
- Prohibition of random drug testing
- Right to report to duty under impairment
- Right to use on duty



Effects of Marijuana

- Short term memory problems
- Impaired thinking
- Loss of balance and control
- Decreased concentration
- Changes in sensory perception
- Impaired ability to perform complex tasks
- Decreased alertness
- Decreased reaction times



Effects of Marijuana

- Effects can last 2-6 hours
- Can be found in urine for 1-5 days or up to 6 weeks if regular user



Why should employers care about marijuana use?

- Impaired motor performance
- Inability maintain attention, estimate time and distance, demonstrate coordination on divided tasks
- Increase in absenteeism
- Employee claims reasonable accommodation right before termination
- Employee uses at work with prescription

Evolution of California

- Proposition 215/Compassionate Use Act of 1996
- H&S Code 11362.5 et seq



Department of Justice

- Federal DOJ relaxes enforcement
- October 19, 2009: DOJ issues statement it will not focus federal resources in states whose actions are in compliance with state laws providing for use of medical marijuana

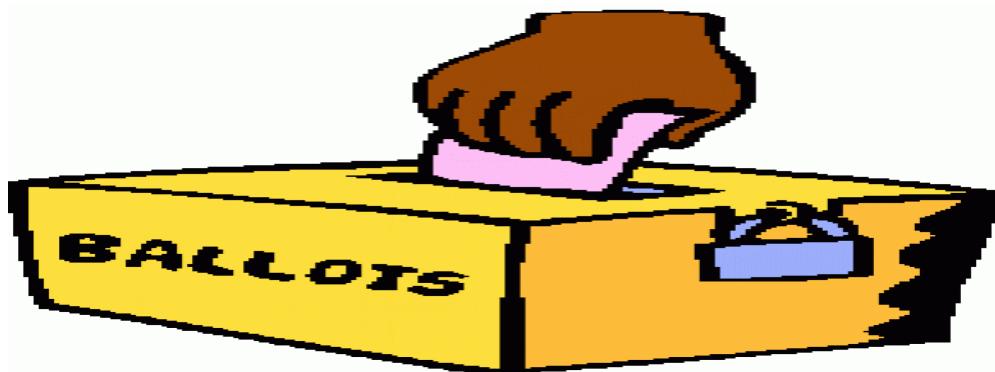
Proposition 64



- 21 and older – may purchase at state-licensed businesses
- Use
 - In private home or licensed on-site business
- Prohibitions on use
 - Not while driving
 - Not in a public place
 - Not on school grounds, daycare center, youth center

Proposition 64

- Possession
 - Up to 28.5 grams of marijuana
 - Up to 8 grams of concentrated marijuana
 - May grow up to 6 plants in private home but may not grow in area that is unlocked or visible from public place



Federal Laws



- **Controlled Substances Act**
 - Marijuana listed as Schedule 1 drug under federal law for highest potential for abuse and no acceptable medical use
 - Marijuana still illegal under CSA
- **Drug Free Workplace Act of 1988**
 - Federal grantees: Must provide drug free workplace as condition of receiving grants
 - DFWA requires employer have a policy regarding consequences of illegal drug use at work
 - Employee must notify employer if convicted of criminal drug violation
- **Department of Transportation Drug and Alcohol Testing Regulations**
 - Marijuana use illegal for safety sensitive positions

Federal Laws/Transportation Across State Lines

US Transportation Safety Administration

Enforces federal rules on commercial airlines

Illegal to transport marijuana on airplane

Leads to federal drug transportation charges



Americans with Disabilities Act

- Employee has prescription that requires use of marijuana for treatment of a medical condition
- ADA does not protect users of marijuana for medical reasons
- *James v Costa Mesa* (9th Cir.) 700 F.3d 394
 - ADA expressly excludes individuals who currently engage in illegal use of drugs and marijuana remains illegal under federal CSA.

Fair Employment Housing Act

- *Ross v Raging Wire Telecommunications* (Cal. S. Ct)
- Employee tested positive for medical marijuana – employer terminated employee for violating drug policy
 - S. Ct. examined California’s medical marijuana statute and the fair employment laws
 - No violation of FEHA based on employer’s refusal to accommodate use of marijuana to relieve back pain
 - S. Ct. stated FEHA does not require employers to accommodate use of illegal drugs

Take away

- Include marijuana as a prohibited substance and revise drug and alcohol policy
- Notify all applicants and employees of drug and alcohol policy
- Train all supervisors on policy and symptoms of marijuana impairment
- Ensure practices to protect confidentiality of employee testing positive
- Consistent enforcement

