

School Daze: Addressing Employee Drug and Alcohol Issues In Community Colleges

DATE

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LS

OVERVIEW

How and When to Discipline

New Marijuana Laws

What to Do When You Suspect Use

ADA Considerations

Drug Testing

Hypos/Discussion





EMPLOYEE DISCIPLINE

Drug-Free Workplace

- Strict prohibition against the:
 - Unlawful manufacture;
 - Distribution;
 - Dispensing; and
 - Possession or use of any controlled substance in the workplace.
- The “workplace” includes any:
 - Building;
 - Property;
 - Facility; or
 - Satellite center.

Violators SHALL be disciplined

Drug-Free Workplace

- Employees MUST:
 - Notify the District of *any* criminal drug conviction for a violation *occurring within the workplace no later than 5 days after such conviction.*
- District MUST:
 - Notify the federal contracting or granting agency within 10 days of receipt of notice of such a conviction.

Drug-Free Workplace

- Implementation should generally include the following steps:
 - Notification to employees of the District's Drug-Free Workplace Policy and its provisions;
 - Establishment of a drug-free awareness program; and
 - Programs intended to inform employees of the dangers of drug abuse in the workplace, are available to all employees.

Cause for Dismissal- Faculty

- EC 87732: Eight enumerated grounds for dismissal of regular academic employee
- Use of drugs/alcohol at work may provide grounds for dismissal
- EC 87736- special rules if charged with certain narcotics crimes



Cause for Dismissal-Classified

- EC 88013
- Collective Bargaining Agreements
- Board Policy/Regulations
 - i.e. Unsatisfactory personal habits or unprofessional conduct which can include
 - Consuming alcoholic beverages or illegal drugs, including medical marijuana, while on duty;
 - Reporting to work under the influence of alcohol or illegal drugs, including medical marijuana; and
 - Immoral conduct while on duty (E. C. Section 88013)



SUSPECTED USE

Initial Steps - Removal

- Upon notification of an employee being under the influence of drugs or alcohol:
 - Ask the employee to come to the office or send an administrator to observe his or her condition.
 - If the employee appears to be under the influence, he or she should be removed from duty at that time.
- Invite a nurse or law enforcement to observe, where appropriate.
 - May have more expertise in identifying signs and behaviors or someone under the influence.

Initial Steps - Investigate

- Talk to witnesses and document all observations.
 - Focus on how the behaviors affected ability to perform work duties.
- If reasonable suspicion is established, employee may be asked to submit to testing (if CBA permits).
 - Otherwise, employees should be sent home for the day and placed on paid leave.

Initial Steps – Get Them Home

- Do *not* allow the employee to drive themselves home.
 - If they refuse, report to police or call 911 to report that the employee may be driving under the influence of drugs or alcohol.

Initial Steps – Schedule a Meeting

- Schedule a meeting with the employee before permitting a return to work.
 - Fit to return to work?
 - Discuss the incident and proper level of discipline depending on nature of incident and previous conduct.
 - If appropriate, discuss accommodations and or interactive process.



DRUG AND ALCOHOL TESTING



Drug & Alcohol Testing

- Pre-employment? Mandatory for safety-sensitive employees
- Refer to CBA for non-safety sensitive employees

Drug & Alcohol Testing

- To test non-safety sensitive positions, you must have **reasonable individualized suspicion** that an employee is under the influence.
- Reasonable suspicion testing at work = negotiable with unions.
- But, what if the employee consents to testing?



What is Reasonable Suspicion?

- Something less than probable cause but more than mere suspicion.
 - Requires more investigation
- Look for physical or behavioral symptoms or reaction commonly attributed to drugs or alcohol.

Positive Drug Test

- Safety-sensitive positions
 - *Immediate* removal from duty
- No return to duty until
 - Evaluation by SAP
 - Successful completion of SAP prescribed courses or counseling
 - Follow-up evaluation
 - Negative drug test
- Non safety-sensitive positions
 - Response depends on CBA and may include a combination of:
 - Admin leave;
 - Letter of reprimand;
 - Counseling; and/or
 - Termination.

Group Activity

It's 5 O'clock Somewhere

Jane is a faculty member at your college. Jane has a reputation for drinking a lot after work, but you are not aware of that every crossing over into work. Jane (along with other faculty and deans and administrators) is serving on an important committee at the college and you as an HR professional also sit on this same committee. The committee meets on campus at 4pm on Friday afternoons. You notice Jane at the meeting being unusually loud and with somewhat slurred speech you wonder to yourself if she could be intoxicated. It doesn't take long until you start receiving texts and notes from others in the room indicating they also believe she might be intoxicated. One administrator who is sitting near Jane indicates in the text that she believes she can smell alcohol. The president of the college is also in the room and passes you a note stating, "What should we do about Jane?"

How would you address this situation?

What would you do first?



PROPOSITION 64

A hand is holding a single cannabis leaf in the foreground, with a dense field of cannabis plants in the background. A green rectangular box is overlaid on the image, containing the text "RECREATIONAL MARIJUANA" in white capital letters.

RECREATIONAL
MARIJUANA

PROPOSITION 64 - ALLOWS

- Recreational use, possession and cultivation by an individual 21 and over
- Cultivation in a residence, up to 6 plants
- Sale, distribution, dispensaries and deliveries as regulated by the local jurisdiction
- Business regulation and taxes
- Changes penalties for possession, use and cultivation
- Requires jurisdictions to allow transportation of marijuana

PROPOSITION 64 – DOES NOT ALLOW

- Cultivation, possession or use by anyone under the age of 21
- Public smoking or ingesting of marijuana
- Smoking or ingesting marijuana while driving, driving “under the influence,” or possessing an “open container”
- The location of any marijuana business within 600 feet of a school, daycare or youth center
- Smoking or ingesting marijuana in, on or near a school, daycare or youth center
- Smoking marijuana in a tobacco-free zone
- Marijuana advertising directed at minors

PROPOSITION 64 – DOES NOT CHANGE

- Employer's ability to regulate workplace policies related to drugs/alcohol
- School's ability to regulate and maintain a drug-free school zone
- The existence and use of medical marijuana
- The obligations of mandated reporters
- U.S. Department of Transportation regulations for bus drivers as safety-sensitive positions.

ISSUES

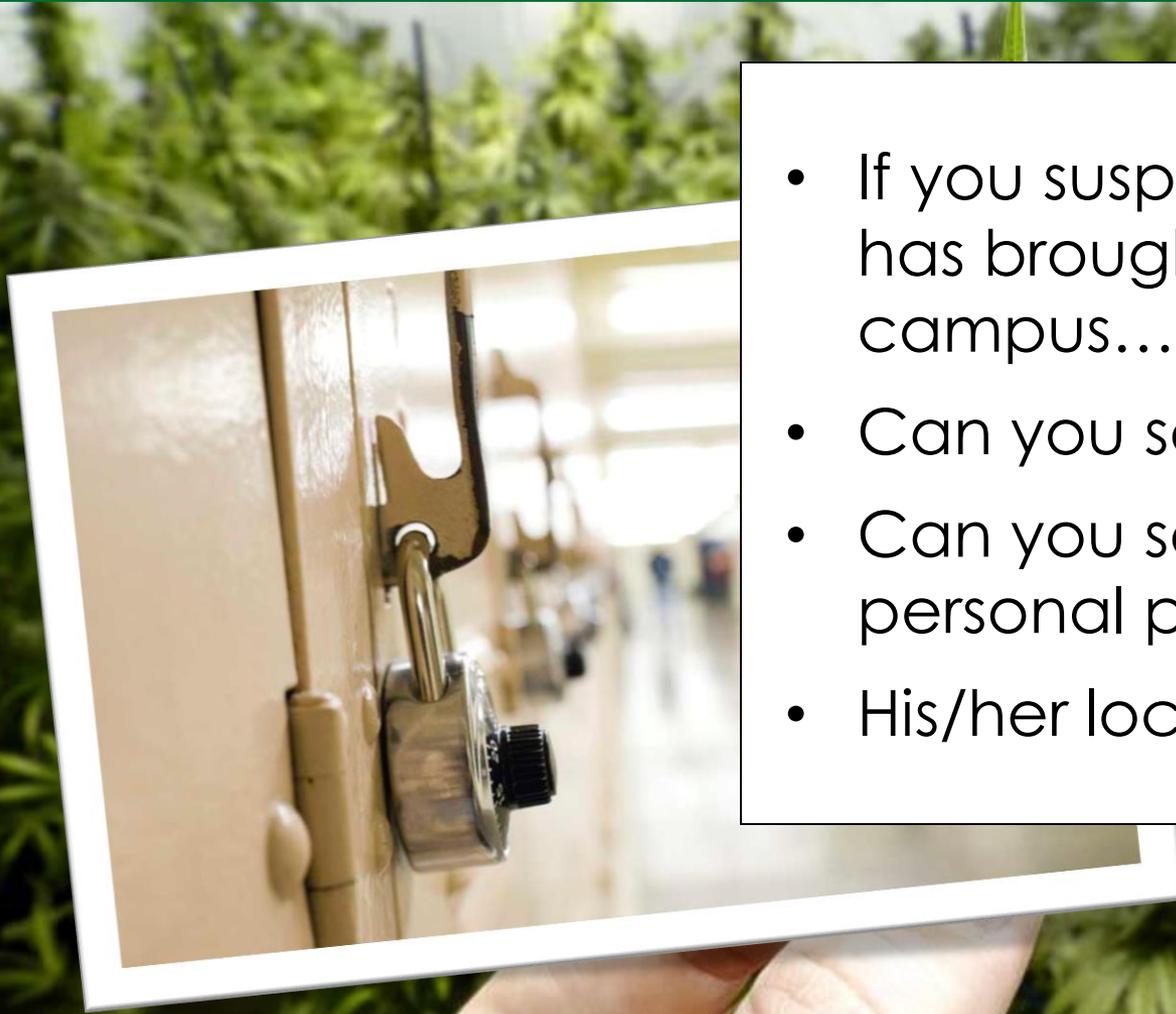
- Employee Rights?
- Student Rights?



ISSUES

- When can I drug test?
- How do I know when I have enough “reasonable suspicion?”
- What is the right disciplinary response?

ISSUES



- If you suspect an employee has brought pot on campus...
- Can you search him/her?
- Can you search his/her personal possessions?
- His/her locker?



STUDENTS

STUDENTS

GENERAL RULE

PROP 64 has no impact on laws prohibiting those under the age of 21 from smoking or possessing marijuana.

STUDENTS

Proposition 64 amends the penalties for those found to possess marijuana

- **Under 18:** first offense requires complete four hours of drug education or counseling and up to 10 hours of community service over a period not to exceed 60 days.
- Second offense or subsequent offense requires six hours of drug education or counseling and up to 20 hours of community service over a period not to exceed 90 days.
- **Age 18 -21:** Infraction, \$100 Fine
- Additional penalties for possession and use on K-12 school grounds.

PROPOSITION 64



- Due to this cultural shift around cannabis, schools and colleges may see increased marijuana possession and use in their schools and workplaces.
- All employers should review their workplace policies to ensure their properties are protected Drug- and Alcohol-Free Zones.

Accessible



ADA CONSIDERATIONS

Alcoholism Under the ADA

- Alcoholism is a disability.
 - The reasonable accommodation for which is the *opportunity* to get treatment.
- General alcohol use does not require accommodation, unless:
 - Employee admits alcoholism
 - Is disabled
 - Requests time off for treatment

Alcoholism Under the ADA

- OK to discipline for being under the influence at work
- Can dismiss for alcoholism if reasonable accommodation fails
- Focus on job performance

GROUP ACTIVITY

“But It’s Medicine.....”

Ted is a manager at your college. You have recently become aware from a reliable source that Ted has a medical condition for which his doctor has prescribed medical marijuana to be used (smoked) at least two times during work hours each day. Ted has not made HR or his supervisor aware of this yet.

How would you address this situation?

What would your first steps be?

How would this change if Ted did come to HR to inform them of his need for using the medical marijuana?



QUESTIONS





Lozano Smith
ATTORNEYS AT LAW

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