

Federal Spending Bill Creates Controversy Over Federal Government's Position on Medical Marijuana

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Buried in the \$1.1 trillion federal spending bill for 2015 — which Congress approved last weekend and which President Obama signed into law on December 16, 2014 — **is a measure stating that federal funds may not be used by the U.S. Department of Justice (DOJ) to prevent certain states from implementing medical marijuana laws.** The measure provides:

None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

This prohibition has been widely touted in some media as signaling a reversal of the ban on medical marijuana under federal law. It does not. It merely restricts the use of funds in a one-year budget bill. The bill does not exempt marijuana as an illegal Schedule I drug under the federal Controlled Substances Act. (A Schedule I drug is one that has a high potential for abuse, lacks any accepted medical use, and lacks any accepted safety for use in medically supervised treatment.)

The inclusion of this provision follows an August 2013 U.S. Department of Justice announcement that, as a matter of prosecutorial discretion, DOJ would not use its limited resources to challenge state laws legalizing recreational marijuana, as long as the states implemented strong regulatory schemes to prevent crime.

Notably, the budget bill's list of states excludes New York, which passed a medical marijuana law in 2014 (that law is expected to take effect in late 2015). It seems unlikely, however, that DOJ will enforce a different policy in New York than in the states listed in the budget bill.

What are the implications for employers?

As stated previously, marijuana remains illegal under federal law. But because the current Administration will not be taking any action to prevent the implementation of medical marijuana and,

we expect, recreational marijuana laws, there is a public perception that the federal government endorses these laws. While the budget bill does not make marijuana legal under federal law, employers should review carefully the applicable medical and recreational marijuana laws in the states where they operate to determine whether these laws impose any obligations on employers (many do not). In those states where the medical marijuana laws prohibit employment discrimination, employers should assess the risk in formulating their policies. One risk, for example, is that state courts and state administrative agencies may choose to enforce state laws and ignore federal law when faced with these issues (particularly now that Congress has expressed a “hands-off” approach). Employers should be cognizant of the risks and consult with counsel to create appropriate strategies to address medical and recreational marijuana in the workplace.

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