

Construction One-Minute Read: Medical Marijuana and the Illinois Workplace

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There are roughly 30,000 people with medical marijuana registry identification cards in Illinois, and marijuana dispensaries are becoming a more common sight. As the popularity of this treatment continues to grow, contractors are more likely to be faced with hiring and disciplinary decisions involving employees using marijuana. As such, contractors may want to take care to understand the legal landscape governing these decisions.

Under Illinois law, an employer may not refuse to hire a candidate or discharge an employee based on the fact that the individual possesses a medical marijuana card. For this reason, during the hiring process, employers may not want to ask a candidate whether he or she has a medical marijuana card. If an employer inquires about medical marijuana use during the interview process, the employer could be accused of requesting health-related information in formulating a decision not to hire.

Employers often discover a candidate has a medical marijuana card as part of the drug-screening process. Sometimes a candidate, prior to submitting to a drug screen, will divulge the existence of a medical marijuana card in an effort to explain an anticipated failure. In other cases, the candidate may not mention his or her medical marijuana card until confronted with a failed screening. In most cases, provided that the candidate has a valid medical marijuana card, the employer cannot refuse to hire the candidate for failing the screening or failing to mention the license.

If a candidate who holds a valid card attempts to circumvent the drug-screening process (for example, by bringing with him or her an old urine sample or one that belonged to another person), a contractor may refuse to hire the candidate based on that fraudulent conduct. If circumvention is suspected or determined, a contractor would be well served to obtain as much supporting information from the testing lab as possible, including witness statements/narratives and copies of the candidate's test results.

A contractor is within its rights under Illinois law to implement a drug-free job site policy that prohibits employees with medical marijuana cards from consuming marijuana and/or being impaired during working hours, and the contractor can discipline violating employees accordingly. An employee who tests positive must be given an opportunity to prove he or she did not consume marijuana and/or was not impaired during working hours before discipline may be administered. Additionally, a contractor may discipline or refuse to hire an individual with a medical marijuana card for failing a drug test if the

contractor risks losing a federal contract or federal funding.

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