

Medical marijuana could cost employees their jobs

By Marcia Heroux Pounds

Even if medical marijuana becomes law in Florida, employees with debilitating medical conditions could be fired for using it – regardless of whether they have a doctor's approval.

Amendment 2 contains no employee protections, lawyers say, beyond caregivers assisting with medical marijuana.

Employers and legal experts say businesses are likely to make individual judgments when it comes to employees with medical marijuana prescriptions. But an employer who prohibits marijuana use by employees could still enforce those policies.

"The employer could say, 'I don't care about your prescription, you're fired anyway,'" said **Brett Schneider, who heads the labor law practice at Weiss Serota Helfman in Fort Lauderdale.**

Marijuana is still illegal on the federal level, and employers would still be able to require drug testing to support their no-drug workplace policies.

"If you test positive, you are at risk of losing your job, even though you're taking marijuana like a medication," said Bob Turk, partner with the Stearns Weaver law firm in South Florida.

David Tilbury, 43, of Fort Lauderdale lost his seven-year job in June after he refused to take a drug test. He admitted using marijuana for medicinal purposes, but he said he didn't want a positive drug test on his work record.

Marijuana "brings down my pain from a 10 to 4 range within five minutes," said Tilbury, who said he suffers from arthritis pain due to his 12 surgeries for dwarfism.

"I'm hoping once the stigma is removed, it becomes more accepted. I hope employees can still keep their jobs," he said.

Turk and Schneider both expect that some employers will show more acceptance to medical marijuana if the law passes.

"From a practical perspective, employers may say, 'We're OK with this as long as you have a valid prescription.'" said **Schneider, president of the Human Resources Association of Broward County.**

Laws governing the treatment of disabled people in the workplace also could be a concern for employers.

The American with Disabilities Act excludes protection for individuals engaged in the illegal use of drugs. But



there might be a legal conflict with Florida's Civil Rights Act, which protects disabled workers from discrimination.

Sheila Cesarano, a partner with Shutts & Bowen in South Florida, said employers who fire a disabled worker for legal medical marijuana use could risk a charge under state law. Cesarano said she some employers might make informal accommodations or consult a doctor to make sure a dosage at home won't affect the employee at work.

The law is "far more pro-employee than you might imagine," she said. "The burden is on the employer to show a safety-related reason."

Ken Lebersfeld, chief executive of Boca Raton-based retailer Capitol Lighting, said he favors more personal freedom and less government intervention, so he favors Amendment 2.

But as an employer, he would like more information on how medical marijuana use might affect workplace performance.

"We would have to handle performance issues the same way we would handle it if someone was abusing legally purchased alcoholic beverages. If someone is drunk in the workplace, it can be dangerous and unproductive — it would be the same situation if they were high," he said.

Advanced Power Technologies in Pompano Beach maintains a drug-free workplace, but CEO Devin Grandis said he wants Amendment 2 to pass because it will increase his pool of job candidates.

Grandis said he has fired good employees who tested positive for a remnant of marijuana use over a weekend. The company employs more than 100 people in Florida.

"Pot in moderation is no different than wine or hard liquor in moderation," he said. "For them to recreationally smoke pot, I could care less about it — as long as they show up not being drunk or stoned."

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