



# **Medical Marijuana at Work**

## ***The Grass Isn't Always Greener***

# I. Some Basic Facts:

## **Types Of Types of Marijuana Plants**

- Belong to the *Genus Cannabis*:
  - Three species:
    - Sativa: Can be smoked to obtain its effects
    - Indica: Can be smoked to obtain its effects
    - Ruderalis: Can be smoked but provides no effect

# How Marijuana Works

- The body contains molecular structures known as receptors that are activated by the cannabinoids contained in marijuana.
  - The body contains two types of receptors that interact with cannabinoids (CB<sub>1</sub> and CB<sub>2</sub>).
  - Similar to a lock and key where the receptor is the lock and the key is the cannabinoid. The key is specific to the lock opening a door for effects to occur in the body.

# How Marijuana Works

- Most common cannabinoids include:
  - Anandamide
    - Already present in your body at low levels
  - Delta-9-tetrahydrocannabinol (THC)
    - In marijuana
    - Interacts with CB1 and CB2 receptors giving the effects of feeling high
    - High concentrations in sativa species, moderate in indica species
  - Cannabidiol (CBD)
    - In marijuana
    - Interacts differently than THC with CB1 and CB2 receptors along with a serotonin receptor giving the effects of feeling relaxed and heavy aka “stoned”
    - Higher concentrations in indica species versus sativa species

# How the Body Interacts With Cannabinoids

- Absorption:
  - Rate and amount of drug entering your body varies greatly on administration method and formulation.
    - Smoking, swallowing, injecting, rectal, IV
    - Smoking provides quicker effects than swallowing
- Distribution:
  - THC and CBD go into your brain and body tissues from the bloodstream rapidly giving its effects.
- Metabolism:
  - The body interacts with THC and CBD giving new modified compounds, some are active with the receptor(s) and others are not .
- Elimination:
  - 80-90% is excreted within 5 days
  - In heavy cannabis users, THC can accumulate in fatty tissues giving prolonged detection of cannabis use (up to 30 days).

# Types of Medical Marijuana

- Phytocannabinoids
  - Found in botanical cannabis, contains hundreds of cannabinoids, most notably THC and CBD
- Synthetic cannabinoids
  - Made in laboratories, examples include K2, spice, FDA approved Marinol<sup>®</sup> (dronabinol)

# 2010 National Statistics: Drug and Alcohol Impairment

According to the Substance Abuse and  
Mental Health Services Administration:

- 8.4% of full-time employees in the U.S. reported using illicit drugs.
- 6.7% of population aged 12+ reported heavy alcohol use.

# Adverse Effects of Marijuana Use On Employees

- Increased risk of absenteeism and decreased production
- Decreased ability to self-care
- Increased risk of loss of support systems
- Increased risk of family discord
- Increased risk of long-term joblessness
- Increased risk of co-morbidities, such as depression/mood disorders



# Adverse Effects of Employee Marijuana Use On Employers

- Increased rate of absences/tardiness
- Potential danger to self and co-workers
- Increased risk of injury outside and at work
- Increased risk of workers compensation claims
- Decreased productivity
- What about OSHA's promise of "safe and healthful working conditions"?

# Federal Law: Controlled Substance Act (CSA)

- Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970
- Regulates the manufacture, importation, possession, use, and distribution of certain substances
- Creates “Schedules” of drugs with defined qualifications (maintained by the DEA and FDA)
- Scheduling can change through legislative amendments and petitioning
- States can maintain a separate classification list that conflicts with federal classifications

# Federal Law: Controlled Substance Schedules

Schedule	Qualifications
I	<ul style="list-style-type: none"> <li>• High potential for abuse</li> <li>• <b><u>No currently accepted medical use</u></b></li> <li>• Lack of accepted safety for use under medical supervision</li> </ul> <p><i>*Only Schedule I Controlled Substances are completely illegal under federal law</i></p>
II	<ul style="list-style-type: none"> <li>• High potential for abuse</li> <li>• <b>Have currently accepted medical use</b></li> <li>• Abuse may lead to severe psychological or physical dependence</li> </ul>
III	<ul style="list-style-type: none"> <li>• Abuse potential less than Schedule I &amp; II</li> <li>• <b>Have currently accepted medical use</b></li> <li>• Abuse may lead to moderate or low physical dependence or high psychological dependence</li> </ul>
IV	<ul style="list-style-type: none"> <li>• Abuse potential less than Schedule III</li> <li>• <b>Have currently accepted medical use</b></li> <li>• Limited physical dependence or psychological dependence relative to Schedule III</li> </ul>
V	<ul style="list-style-type: none"> <li>• Abuse potential less than Schedule IV</li> <li>• <b>Have currently accepted medical use</b></li> <li>• Consist primarily of preparations containing limited quantities of certain narcotics (i.e., Robitussin with Codeine)</li> </ul>

# Federal Law: Marijuana

## **Marijuana is a Schedule I drug under the federal Controlled Substances Act**

- Possession, usage, purchase, sale, and/or cultivation of marijuana is illegal
- May not be prescribed, administered, or dispensed
- Other Schedule I drugs include:
  - Lysergic acid diethylamide (LSD)
  - Diacetylmorphine (Heroin)
  - Gamma Hydroxybutyric Acid (GHB)
  - MDMA (Ecstasy)
  - Mescaline
  - Peyote

# Federal Law:

## DOJ enforcement priorities

On August 29, 2013, the DOJ issued new guidance regarding marijuana enforcement priorities:

- Preventing distribution to minors;
- Preventing revenue from going to criminal enterprises, gangs, and cartels;
- Preventing diversion of marijuana from states where it is legal in some form to other states where it is illegal;
- Preventing marijuana activity from being used as a cover for the trafficking of other illegal drugs;
- Preventing violence and the use of firearms;
- Preventing drugged driving;
- Preventing the growing of marijuana on public lands;
- Preventing marijuana possession or use on federal property.

# So Marijuana Is Illegal Under Federal Law, But What About State Law?

23 states + D.C. have legalized medical marijuana

- Alaska
- Arizona
- California
- Colorado
- Connecticut
- D.C.
- Delaware
- Hawaii
- Illinois
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota

- Montana
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- New York
- Oregon
- Rhode Island
- Vermont
- Washington

\*\* Legislation is pending in: Florida, Ohio, and Pennsylvania

# States Where Marijuana Also Is Legal For Recreational Use

- **Colorado: Colo. Const. art. XVIII, § 16**
  - Adults 21+ can grow up to six plants privately in a locked space.
  - May legally possess up to 1 ounce while traveling.
  - May gift of up to 1 ounce to other citizens 21 years of age or older.
  - Consumption in public remains illegal.
  - Driving under the influence / impairment of marijuana is illegal (no measurement provided by statute).

# States Where Marijuana Is Legal For Recreational Use

- **Washington: Initiative 502**
  - Does not amend or repeal medical marijuana laws (See Chapter 69.51A RCW).
  - Allows state to license and regulate marijuana production, distribution, and possession for persons over 21 and tax marijuana sales.
  - Adults may carry one ounce of marijuana.
  - Still illegal to use in public.



- **All states allowing medicinal or recreational marijuana allow employers some ability to limit its use at work:**

1. All states allow employers to prohibit employees from using marijuana during work hours or on employer premises.
2. All states allow employers to prohibit employees from working while “under the influence.”

## **But what rights do employers have to address lawful use outside of work that may impact work?**

Although all states allow employers to prohibit employees from working under the influence of marijuana, some states provide more stringent requirements before an employer may take action against an employee who has lawfully used marijuana outside of work.

- Arizona:

- Employers in Arizona cannot take action against an employee based solely as a positive drug test. Instead, they must also prove some other statutorily prohibited conduct (i.e., employee used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment). See ARS 36-2813.

- Delaware and Minnesota:

- The Delaware and Minnesota statutes prohibit discrimination against employees or applicants on the sole basis of their status as medical marijuana patients or because of positive drug tests.
- Employers in Delaware cannot take action against an employee for alleged lawful use outside of work unless the failure to do so would jeopardize an employer’s “monetary or licensing related benefit under federal law or regulations.” See Del. Code Title 16, § 4905A.

- Other states offering similar laws to protect lawful marijuana users include: Connecticut, Illinois, Michigan, Maine, and Rhode Island.
- New York’s Compassionate Care Act (enacted July 7, 2014) defines certified patients as disabled under the New York Human Rights Law and prohibits discrimination.
- In the remaining states without specific anti-discrimination protections for lawful marijuana users, the Courts will have to consider whether the policies behind other employee anti-discrimination statutes should extend to protect lawful users of marijuana.

**IS IT “LAWFUL ACTIVITY” IF IT IS LEGAL UNDER STATE LAW BUT ILLEGAL UNDER FEDERAL LAW?**

**CAN AN EMPLOYER TERMINATE AN EMPLOYEE FOR VIOLATING FEDERAL LAW AND FAILING ITS DRUG POLICY?**

- ***Coats v. Dish Network, L.L.C.***, 303 P.3d 147 cert. granted, 2014 WL 279960 (Colo. Jan. 27, 2014):

– Facts:

- Coats, a quadriplegic, had been licensed by the state of Colorado since 2009 to use medical marijuana to treat his muscle spasms.
- Coats was fired in 2010 for failing a random drug test conducted by the employer.
- Coats sued on the grounds that his marijuana use was within the licensed limits of the Medical Marijuana Amendment to the Colorado Constitution and never used marijuana on company premises or operated under the influence at work.
- Coats claimed his termination violated the Colorado Civil Rights Act because his termination violated the Lawful Activities Statute, which prohibits termination based on lawful activities outside of work during non-working hours.

**SO WHAT RESULT?**

– Holding:

- The Trial Court dismissed the action for failure to state a claim because the Court determined Coats' medical marijuana use was not lawful activity under Colorado law because the Amendment did not establish a state constitutional right to state licensed medical marijuana use, but instead created an affirmative defense from prosecution for such use.
- The Court of Appeals upheld the termination, finding that the activity was not "lawful," citing *Gonzalez v. Raich*, 545 U.S. 1 (2005) ruling that state law authorizing possession and cultivation of marijuana does not circumscribe federal law prohibiting use and possession. "No state law could completely legalize marijuana for medical purposes because the drug remains illegal under federal law, even for medical uses."
- On January 27, 2014, the Colorado Supreme Court agreed en banc to review the *Coats* decision.

- **How can employers in legalized states determine whether an employee is under the influence of marijuana?**

- There is no one dispositive test for demonstrating an employee's impairment, and employers are encouraged to provide training to managers and supervisors on how to recognize and respond to signs of impairment when they suspect employees are under the influence at work.
- Some examples of testing for impairment include having employee's undergo balance tests and checking their reflexes (both of these tests mirror alcohol impairment tests).
- The important focus should be whether employees manifest signs of impairment and cannot fulfill their job responsibilities.
- In Washington and Montana, for instance, it's illegal to drive with 5 or more nanograms of THC per milliliter of blood. In 11 other states, any amount of THC in your system while driving is criminalized.
- Unfortunately, THC may remain in the blood (or fatty tissue) for days without necessarily reflecting impairment.

# Medical Marijuana Implications for Workers' Compensation

- **Questions:**

- If an employee is injured while on marijuana at work, is it a compensable injury?
- Is medical marijuana a compensable drug?
- What accommodations, if any, should employers make?
- Is the employee afforded any protections under the law?

# Is an Injury Compensable If You're High When You're Injured?

Most marijuana laws do not address workers' compensation issues. States that do include:

- **Alaska: AS 23.30.120** – the presumption of compensability does not apply if the employee was under the influence of drugs at the time of the injury and that intoxication was the proximate cause of the injury. **However, there is an exemption if the employee has taken drugs under a doctor's direction.**
- **Colorado: C.R.S.A. 8-42-112.5** – nonmedical benefits otherwise payable to an injured worker are reduced 50% where the injury results from the presence in the worker's system, during working hours, of controlled substances that are not **medically prescribed.**
- **New Mexico: N.M.S.A. 52-1-12** – no compensation is payable if the injury was occasioned solely by the person being under the influence of a narcotic drug **unless the drug was administered to the person by a licensed practitioner.**

# Is an Injury Compensable If You're High When You're Injured?

Some state courts have addressed workers' compensation issues based on existing workers' compensation / injury laws.

- ***Grammatico v. Indus. Comm'n***, 211 Ariz. 67, 117 P.3d 786 (2005)

– Facts:

- Grammatico tested positive for marijuana, amphetamines, and methamphetamines, which he admitted using two days prior to the date of injury while off work.
- However, accident was caused by an inherent risk /danger of the job, so accident was compensable.

– Holding:

- Arizona Supreme Court invalidated a statute requiring an employee who fails a post-accident drug test used to prove that the drug use did not contribute to the employees' injury.
- Under Arizona's state constitution, an injury is only found to be non-compensable if an inherent risk or danger of the job played no part in the injury.



# Is an Injury Compensable If You're High When You're Injured?

- ***Lenny Szarek, Inc. v. Workers' Comp. Comm'n***, 396 Ill. App. 3d 597, 919 N.E.2d 43 (2009)

– Facts:

- Szarek, an apprentice carpenter, fell through a 9-foot stairwell hole and suffered paraplegia. Szarek tested positive for marijuana and cocaine, but was still awarded benefits and penalties under the Workers' Compensation Act for work-related injury.
- The doctor found that the intoxication was significant, but could not state that it was the only causal factor in the accident.

– Holding:

- Court rejected employer's claim that recovery should be denied as scientific evidence establishes marijuana usage.
- Even if the marijuana contributed to the accident, it was not the sole cause. The existence of the hole constituted a work-related risk.

# Is an Injury Compensable If You're High When You're Injured?

- ***Hopkins v. Uninsured Employers' Fund***, 2011 MT 49, 359 Mont. 381, 251 P.3d 118 (2011).

– Facts:

- Plaintiff Brock Hopkins worked for Great Bear Adventures in the grizzly bear enclosure. After smoking pot on his way to work, Hopkins decided to enter the bear pen and started passing out food. “Once inside, nothing separated him from the bears,” at which point the largest bear – “Red” – knocked him down, sat on him and bit him on the rear.
- The Workers’ Compensation Commission granted Hopkins’ claim for workers’ compensation, holding that his use of marijuana was not a major contributing cause of his on the job accident. The employer’s insurer appealed.

**SO WHAT RESULT?**

# Is an Injury Compensable If You're High When You're Injured?

## –Holding:

- Montana Supreme Court affirmed the Workers' Compensation Commission's ruling that \$65,000 in medical bills should be covered by workers' compensation since the injury occurred in the scope of Hopkins' employment and marijuana was not the major contributing cause of Hopkins' injuries.
- The Court reasoned that while Hopkins' "use of marijuana to kick off a day of working around grizzly bears was ill-advised to say the least and mind-bogglingly stupid to say the most," there was no evidence presented regarding Hopkins' level of impairment. The Court also agreed with the Workers' Compensation Commission that grizzlies are "equal opportunity maulers" without regard to marijuana consumption, and consequently affirmed the Workers' Compensation Commission decision to grant coverage.

# Is an Injury Compensable If You're High When You're Injured?

- ***Thompson v. Wiltsie Const. Co., Inc.***, 72 A.D.3d 1373, 898 N.Y.S.2d 739 (2010)

– Facts:

- Thompson was injured in fall that occurred during the course of his employment.
- Thompson's urine sample, taken 18 hours after the incident, revealed abnormally high levels of marijuana metabolites. A coworker testified that Thompson did not smoke marijuana on the day of the accident, but admitted Thompson used marijuana a couple of days earlier. A coworker, his employer, and EMTs on the scene and hospital intake forms all stated he appeared normal on the day of the accident. Because the employer failed to overcome the presumption that claimant's injuries were not caused solely by his purported intoxication, the Workers' Compensation Board found that Thompson was entitled to benefits.

– Holding:

- The Court affirmed the Workers' Compensation Board's finding based on the statutory presumption that Thompson's injury was not caused solely by his intoxication.
- Specifically, the Court held that it "may not interfere with the Board's decision unless all the evidence and reasonable inferences therefrom allow no other reasonable conclusion than that intoxication is the sole cause' of claimant's injury."

# Required to Pay For Prescribed Medical Marijuana?

Colorado, Michigan, Montana, Oregon and Vermont all have statutes confirming that insurers and employers are not required to cover or reimburse for the medical use of marijuana.

- **Colorado:** No insurer shall be required to pay for use of marijuana. See Colo. Const. art. XVIII, § 14(10)(a).
- **Michigan:** A government medical assistance program or commercial or non-profit health insurer [is not required] to reimburse a person for costs associated with the medical use of marihuana. See Mich. Comp. Laws § 333.26427(c)(1).

# Required to Pay For Prescribed Medical Marijuana?

- **Montana:** Medical marijuana is not a compensable medical service under the workers' compensation law. See A.R.M. 24.29.1526(3)(j).
- **Oregon:** Nothing in the Medical Marijuana Act shall be construed to require a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana. See O.R.S. 475.340.
- **Vermont:** Special statutory exemption for compensability of medical marijuana. See 18 V.S.A. 4474c(b)(4).

Other states' courts, however, have considered whether a prescription for medical marijuana must be covered or reimbursed.

# Required to Pay For Prescribed Medical Marijuana?

- ***Cockrell v. Farmers Insurance and Liberty Mutual Insurance Company***, (ADJ504565, ADJ2584271) (California Workers' Compensation Panel Decision, September 2012)
  - Facts:
    - Cockrell sought reimbursement from the insurance company for his out of pocket medical expenses from purchasing medical marijuana.
    - The medical evaluator approved of the use of the medical marijuana for pain control and found that medical marijuana was reasonable and necessary to cure or relieve the employee's symptoms of his industrial injury under Labor Code Section 4600.
  - Holding:
    - The Workers' Compensation Judge held that Cockrell was entitled to reimbursement for self-procured medical marijuana.
    - Citing Health and Safety Code § 11362.785(d), the California Workers' Compensation Appeals Board ("WCAB") reversed the Worker's Compensation Judge. Section 11362.785(d) states that: "Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana."

# Required to Pay For Prescribed Medical Marijuana?

Certain states permit (but do not require) insurance companies to reimburse for prescribed medical marijuana:

- **New Mexico:** The Workers' Compensation system requires a patient registry identification card, supervision and monitoring, and caregiver and practitioner licensing in order for the drug to be compensable.
- **Washington:** Nothing in the medical marijuana law requires a health carrier to be liable for any claim for reimbursement for the medical use of marijuana, but “[s]uch entities may enact coverage or noncoverage criteria or related policies for payment or nonpayment of medical cannabis in their sole discretion.”



# Required to Pay For Prescribed Medical Marijuana?

***Vialpando v. Ben's Auto. Servs.***, 2014 WL 2420112 (N.M. Ct. App. May 19, 2014)

- Facts:
  - New Mexico's Compassionate Care Act provides for medical marijuana when a patient is certified for the program by his health care provider. Under the Act, an employer is required to provide an injured worker "reasonable and necessary health care services from a health care provider."
  - Vialpando filed an application for approval of medical treatment using medical marijuana. He had been certified for the program by two physicians. The Workers' Compensation Judge found that Vialpando was "entitled to ongoing and reasonable medical care," including medical marijuana, and ordered the employer to pay for the care. The employer argued that it would be committing a crime if it complied with the court order.
- Holding:
  - The New Mexico Court of Appeals rejected the employer's argument and affirmed the decision of the Workers' Compensation Judge and required the employer to reimburse Vialpando for the cost of medical marijuana, noting that the "[e]mployer does not cite to any federal statute it would be forced to violate, and we will not search for such a statute."

# What Accommodations Are Employers Required to Make For Authorized Marijuana Use?

- **OSHA:** Employers have the duty to provide a safe work environment.
- **Private sector:** Employers can accommodate the use of medical marijuana unless the company receives federal contracts (Drug-Free Workplace Act of 1988).
- **DOT Guidelines:** Does not authorize “medical marijuana” under a state law to be a valid medical explanation for a transportation employee’s positive drug test result.

# What Accommodations Are Employers Required to Make For Authorized Marijuana Use?

## **Americans with Disabilities Act (ADA):**

- Under the ADA, illegal drug users (including medical marijuana users) are excluded from the definition of “individual with a disability” when an employer acts on the basis of illegal drug use. The ADA determines whether a drug is “illegal” by looking exclusively at the Controlled Substance Act (“CSA”). The CSA prohibits all forms of marijuana as a Schedule I drug, so the use of medical marijuana is illegal under federal law even if it is allowed under state law.
  - Despite the increased legalization of medical marijuana in 23 states and D.C., it remains unclear whether the exception for use of drugs “under supervision by a licensed healthcare professional,” contained in 28 C.F.R. § 35.104(5)(iii) is extended to persons using marijuana prescribed by a doctor in a state permitting such prescriptions.
  - However, the ADA does not require employers to accommodate a condition that may pose a threat or harm to other employees. ***See Chevron U.S.A. Inc. v. Echazabal***, 536 U.S. 73, 122 S. Ct. 2045, 153 L. Ed. 2d 82 (2002).

# Accommodation Not Required ...

- ***Johnson v. Columbia Falls Alum. Co.***, 213 P.3d 789 (Mont. 2009):

– Facts:

- Johnson had a prescription for medical marijuana for pain arising from a workplace injury. He limited his use to after work, but never disclosed his prescribed use.
- Employer terminated Johnson after he neglected to inform employer that he was using medical marijuana, failed a drug test, and declined to sign a “last chance” agreement.
- Plaintiff sued for violating the Workers’ Compensation Act and breach of privacy and negligence.

– Holding:

- Montana Supreme Court affirmed the dismissal of the case. There is no duty to accommodate medical marijuana use under the ADA or Montana Human Rights Act.
- The Montana Medical Marijuana Act does not require employers to “accommodate the medical use of marijuana in any workplace,” and does not provide an express or implied private right of action against an employer.

# Accommodation Not Required ...

- ***Ross v. RagingWire Telecomm., Inc.***, 174 P.3d 200 (Cal. 2008):

- Facts:

- Ross suffered from back spasms and injuries sustained while serving in the Air Force and was considered disabled under California's FEHA. He was prescribed medical marijuana to treat his chronic pain under the California Compassionate Use Act of 1996. After failing a preemployment drug test required of all new employees, Ross failed to receive a job offer or accommodation and sued under the Fair Employment and Housing Act.

- Holding:

- Medical marijuana patients cannot recover for discrimination under California's Fair Employment and Housing Act because the FEHA does not require employers to accommodate the use of illegal drugs.
- The California Compassionate Use Act's is designed to exempt medical users and their primary caregivers from criminal liability under state criminal statutes, not to eliminate employer's legitimate interest in whether employees use drugs banned by federal law.

# Can Employers Discriminate or Take Adverse Action Against Marijuana Users?

- ***Roe v. TeleTech Customer Care Mgmt. LLC***, 257 P.3d 586 (Wash. 2011):
  - Facts:
    - Roe sued for wrongful termination after employer rescinded a conditional offer of employment based on failed drug test which revealed marijuana use, despite Roe being lawfully prescribed medical marijuana.
  - Holding:
    - The Washington Medical Use of Marijuana Act does not create a private cause of action for discharge of an employee who uses medical marijuana, either expressly or impliedly.
    - Further, the Act does not create a clear public policy to support a wrongful discharge in violation of public policy claim.

# Can Employers Discriminate or Take Adverse Action Against Marijuana Users?

- ***Cassias v. Wal-Mart Stores, Inc.***, 695 F.3d 428 (6th Cir. 2012):
  - Facts:
    - Employer fired Casias due to a failed drug test, which was in violation of the company's drug use policy. Employer did not honor Plaintiff's medical marijuana card.
  - Holding:
    - Michigan Medical Marijuana Act (MMMA) does not restrict private employer's ability to discipline employee for medical marijuana use, and thus, does not support wrongful discharge claim.

# Can Employers Discriminate or Take Adverse Action Against Marijuana Users?

- ***Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus.***, 230 P.3d 518 (Or. 2010):
  - Facts:
    - Employer sought review of decision of Bureau of Labor and Industries (“BOLI”), which concluded that employer engaged in disability discrimination when it discharged employee due to employee’s medical marijuana use.
  - Holding:
    - Oregon Supreme Court held that an employee terminated for medical marijuana use has no claim for relief under Oregon’s anti-discrimination statutes, which for disability cases tracked and relied upon federal ADA law.
    - The ADA states that an employer need not accommodate an employee's use of illegal drugs.
    - Although the court found that medical marijuana use is an “authorized use” under state law, the state law was preempted by the federal Controlled Substances Act, which makes marijuana illegal for medicinal use.



# Case Study #1

- A Whiff of Smoke
  - Mike has worked loading trucks for your company for seven years
  - He has not been a particularly good employee, with a lot of Friday/Monday absences
  - Mike has had four recorded safety outages in the past year
  - He has had three work-related injuries involving lost time in the past two years

# A Whiff of Smoke (cont.)

- Each injury’s root cause was lack of concentration
- Mike has recently had conflicts with his immediate supervisor, whom he used to date before coming to work for you
- Mike’s supervisor approaches you saying that she thought he seemed “out of it” the other day
- She adds that she thought she smelled marijuana smoke on Mike’s clothes

## What Do You Do?

# Case Study #2

- A Tale of Two Employees
  - Bob and Joe are both forklift operators at the manufacturing plant for which you serve as HR Manager
  - Joe is an excellent long-term employee with many awards on file
  - Bob has been positively reviewed in each review since his hire, a year and a half ago

# A Tale of Two Employees (cont.)

- You learn that they both were witnessed using marijuana off-site, after work
- You have a zero-tolerance drug use policy
- When confronted, Bob shows you his physician certification permitting medical marijuana use
- Joe has no such certification, nor is he a registered user.

**What Do You Do?**