“Likely Projections for Marijuana Legalization in Ohio”

Burkins Ritchie & Associates LLC
1206 North Main Street
North Canton, OH 44720
(330) 471-9037
art@drugfreesafety.net
Marijuana Legalization? In OHIO???
Could Ohio legalize marijuana? It depends on whom you talk to:

What are the chances of joining the growing list of states where marijuana, medicinal or recreational, is available? Well, like most everything, it depends on whom you talk to.
Ohio Voters Reject Issue 3: Marijuana Legalization Measure Fails
Some Argue For Legalization

• State Rep. Bob Hagan, D-Youngstown, introduced House Bill 153 last year that would allow seriously ill patients to grow and use marijuana.

• Rob Ryan, president of Ohio NORML (National Organization for the Reform of Marijuana Laws), seeks to end the civil liberties abuses of what he calls the “failed War on Drugs”.

• Bloomberg News estimates that marijuana sales could generate an extra $100 million or so in state tax revenue in Ohio annually.
Poll Numbers Support Supporters:

- In a January 2014 CNN/ORC International survey, 55% of Americans support legalizing marijuana.

- A February 2014 survey conducted by Quinnipiac University Polling Institute shows 87% of registered Ohio voters said adults should be able to legally use marijuana for medical purposes. (11% opposed)

- 51% of registered Ohio voters support allowing adults to legally possess small amounts of marijuana for personal or recreational use. (44% opposed)

Source: Quinnipiac University Poll: Ohio
February 24, 2014 Ohio Voters Back Medical Marijuana 8-1
Rep. Kirk Schuring, R-Jackson Township:
In many respects, when it comes to a variety of issues, we (Ohioans) tend to proceed more cautiously...

Ohioans tend to behave more permissively and to vote more puritanically.
Today’s marijuana is not the marijuana of the 1960s.

In the past 50 years, marijuana potency has increased significantly. Since the 1960s it has grown approx 10 X stronger.

Source: Mehmedic et al., (2010)
Smoking Pot Can Adversely Affect Mental Performance:

• According to the National Institute on Drug Abuse (NIDA), marijuana use can impact the brain in ways that impair judgment, memory, reasoning and clarity of thought.

• Individuals who begin using marijuana regularly as teens, may experience long-term impairment of their mental abilities that last into adulthood.
Chronic marijuana use has been linked to:

• dropping out of school,
• increased absences, tardiness, accidents, worker’s compensation claims, and job turnover and unemployment,
• social welfare dependence,
• and lower self-reported quality of life

Marijuana as Medicine

Behind the smoke
Marijuana as Medicine?

Therapeutic Potential:
1) Relieving pain
2) Controlling nausea
3) Stimulating appetite
4) Decreasing ocular pressure

Cannabinoid-based medications:
1) Dronabinol (Marinol®)
2) Nabilone (Cesamet®)
3) Sativex®
Three Kinds of Medical Marijuana

FDA Approved
Synthetic Cannabinoids
Marinol®
Cesamet®

In FDA Studies
Purified Cannabinoids
Sativex®
Epidiolex®
Other purified cannabinoids

Not FDA Approved;
No FDA Studies
“Marijuana medicines” states legalize

Doctors can prescribe.
Doctors can administer to patients in studies.
Doctors cannot prescribe.

How can states make marijuana available to patients without putting them at risk?
1. Work with FDA to set up a statewide IND for physicians to investigate potential uses for marijuana and its components in research studies. 2. Provide a supply of pure marijuana, and pure cannabinoids extracted from pure marijuana, that meet FDA standards to protect patients’ health. 3. Commercial brands that ignore FDA regulations do not protect patients.

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Opponents argue that although marijuana may contain some beneficial medical properties, patients do not need to smoke it or eat it to benefit from those properties.

Opponents insist that a distinction must be drawn between raw, natural marijuana, and marijuana’s individual chemical components, which may be isolated and used to create powerful pharmaceutical medicines.

They argue that because patients no longer smoke opium to derive the pain-relieving benefits of morphine, that patients no longer need to smoke natural marijuana to receive its potential medical benefits.
So, Is Marijuana Medicine?

According to MM Opponents:

NO: Raw, natural marijuana that is inhaled, smoked, or eaten by a patient is, in their opinion, NOT medicine.

However...

YES: Marijuana-based pills which have been manufactured and distributed by pharmaceutical companies would qualify as safe medicine.
Majority of medical marijuana users report using marijuana to treat ‘chronic or severe pain.’

- 96% in Colorado
- 91% in Oregon
- 93% in Montana

Source: Colorado Department of Public Health and Environment, 2011; Oregon Public Health Authority, 2011; Montana Department of Public Health and Human Services, 2011
According to the Centers for Disease Control and Prevention (CDC), opioid overdose deaths across the United States in general have increased dramatically since 1999. However, in the 23 U.S. states where medical marijuana has been legalized since 1999, opioid overdose deaths have DECREASED by approx. 25 %.*

*Source: JAMA (Journal of the American Medical Association) Internal Medicine Original Investigation | October 2014 Medical Cannabis Laws and Opioid Analgesic Overdose Mortality in the United States, 1999-2010
According to the United States CDC:

• Since 2006 the U.S. has lost approximately 88,000 citizens to alcohol-related deaths annually.

• In 2014 (most recent available data) the U.S. lost 28,647 citizens to opiate overdose death.

• In 2014 (most recent available data) the U.S. lost exactly 1 citizen to marijuana overdose death.*

* Centers for Disease Control and Prevention: Morbidity and Mortality Weekly Report (MMWR)
Notes from the Field: Death Following Ingestion of an Edible Marijuana Product — Colorado, March 2014 Weekly July 24, 2015 / 64(28);771-772
So, if marijuana is considered to be medicine...

• Can companies still drug test for marijuana?
• Can companies prohibit employees from bringing marijuana to work or being under its influence while on the job?
• What should drug-free workplace policies say about marijuana use?
Fears Regarding Driving Safety

• According to the National Highway Traffic Safety Administration, drugs other than alcohol (legal and illicit drugs—*but not necessarily marijuana*) are involved in about 18% of motor vehicle driver deaths.

• A recent survey found that 6.8 percent of drivers, mostly under age 35, who were involved in accidents tested positive for THC; alcohol levels above the legal limit were found in 21 percent of such drivers.

(Source: http://www.drugabuse.gov/publications/marijuana-abuse/does-marijuana-use-affect-driving)
Opponents argue that increased marijuana use will negatively impact Ohio businesses in many ways.

If employers care about a reliable workforce – they need to care about marijuana legalization.

According to NIDA employees who abuse drugs are:

- **10x** more likely to miss work
- **3.6x** more likely to be involved in on-the-job accidents
- **5x** more likely to file a workers’ comp claim

• Making medical marijuana available will only increase pot use and all associated work consequences.
Impact of Legalization on Business

- Businesses that require pre-employment drug tests may find a noticeably smaller pool of potential hires.
- Small businesses that do not drug test may end up with more employees who use marijuana, effecting job performance, safety, reliability, and liability issues.
- Marijuana legalization may lead to lower workplace performance in employees who use marijuana, as well as lower business output and work product.
- Businesses with employees who drive company vehicles need to consider the potential risks to highway safety posed by employees who smoke marijuana on the job.*
Argument Against Marijuana Legalization

- The illegal status has prevented tens of millions of Americans from using marijuana and other illegal drugs.
- Legalization would dramatically increase its use and abuse and would not reduce crime or costs.
- Public health consequences would be devastating, adversely affecting safety in the workplace, on the highways, personal health and educational achievement.

Social Economic Costs and Tax Revenue

<table>
<thead>
<tr>
<th>SOCIAL ECONOMIC COST</th>
<th>TAX REVENUE GENERATED</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALCOHOL:</td>
<td>185 – 235 Billion *</td>
</tr>
<tr>
<td>TOBACCO</td>
<td>200 Billion **</td>
</tr>
</tbody>
</table>

* National Institute on Alcohol Abuse and Alcoholism (ASAM, July 25, 2012)
** Center for Disease Control and Prevention (ASAM, July 25, 2012)
*** Urban Institute and Brookings Institute (ASAM, July 25, 2012)
What Have Other States Done?

- **Washington State Human Rights Commission:** Medical Marijuana users are not a protected class of citizens, so they “will decline to investigate any claims of discrimination involving medical marijuana”

- **Colorado, Hawaii, Michigan, MT, NJ, NM, VT:** Only on-the-job consumption/impairment is grounds for termination

- **Battle Creek, Michigan:** Courts upheld Walmart’s decision to terminate a cancer patient for using Medical Marijuana, siting that marijuana use is still illegal at the federal level.

- **Rhode Island, Maine:** “No school, employer or landlord may refuse to enroll, employ or lease to or otherwise penalize a person solely for his or her status as a medical marijuana card holder” § 21-28.6-4
New Hampshire Medical Marijuana Law:

"Nothing in this chapter shall exempt any person from arrest or prosecution for:
(a) Being under the influence of cannabis while:
(1) Operating a motor vehicle, commercial vehicle, boat, vessel, or any other vehicle propelled or drawn by power other than muscular power; or
(2) In his or her place of employment, without the written permission of the employer; or
(3) Operating heavy machinery or handling a dangerous instrumentality."

It also specifically protects employers with this provision: "Nothing in this chapter shall be construed to require... Any accommodation of the therapeutic use of cannabis on the property or premises of any place of employment ... This chapter shall in no way limit an employer’s ability to discipline an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis."
What Have Other States Done?

Illinois Medical Marijuana Law:

Illinois' new law has an extensive employment section, which is largely employer friendly. It is one of the rare medical marijuana state laws that actually mentions drug testing: "Nothing in this Act shall prohibit an employer from enforcing a policy concerning drug testing, zero-tolerance, or a drug free workplace provided the policy is applied in a nondiscriminatory manner."

It also states that: "Nothing in this Act shall limit an employer from disciplining a registered qualifying patient from violating a workplace drug policy."

The Illinois law, which became effective January 1, 2014, includes specific language that protects an employer when taking disciplinary action based on a drug test result or when a registered patient uses marijuana on the employer's premises or during work hours.
Delaware Law: Delaware has a law that permits medical marijuana use. The law provides protection for workplaces/employers:

“§ 4907A: Acts not required, acts not prohibited. (a) Nothing in this chapter requires: ... (3) An employer to allow the ingestion of marijuana in any workplace or to allow any employee to work while under the influence of marijuana, except that a registered qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana.”

This allows employers to drug test and establish drug-free workplace programs, but in the case of marijuana, a positive result alone does not automatically mean an employee is under the influence at work. The employer must site other indicators of impairment to support their case.
What Have Other States Done?

North Carolina Law:

- "Intoxication" and "under the influence" shall mean that the employee shall have consumed a sufficient quantity of intoxicating beverage or controlled substance to cause the employee to lose the normal control of his or her bodily or mental faculties, or both, to such an extent that there was an appreciable impairment of either or both of these faculties at the time of the injury.

- A result consistent with "intoxication" or being "under the influence" from a blood or other medical test conducted in a manner generally acceptable to the scientific community and consistent with applicable State and federal law, if any, shall create a rebuttable presumption of impairment from the use of alcohol or a controlled substance. (1929, c. 120, s. 13; 1975, c. 740; 2005-448, s. 2.)
Marijuana Legalized for Recreational Use

In Colorado:
Their intent is to treat cannabis in a manner similar to alcohol.

• **Possession:** State criminal penalties for possession of 1 ounce of marijuana are eliminated. Permits the cultivation of up to six marijuana plants (3 immature, 3 mature) for personal use. Permits the gifting of up to 1 ounce of marijuana to a person 21 or older.

• **Employment:** The new law contains a provision for the workplace. Section 16(6)(a) of the Colorado law says – “Nothing in this section is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees.”
Marijuana Legalized for Recreational Use

State of Washington:

- **Possession:** State criminal penalties for possession of up to one ounce of marijuana for those 21 and older are eliminated. Public consumption of marijuana, like alcohol, can mean a $50 fine.

- **Employment:** The new law does not change the right of employers to drug-test employees.

- **DUI:** A level of 5 nanograms of THC, marijuana's active ingredient, in a driver's blood becomes equivalent to a 0.08 percent blood-alcohol level for driving under the influence.

- **The Washington Law did not contain a specific provision for the workplace.**
Possible Paths to Marijuana Legalization in Ohio:

**Ballot initiative:** Although the Ohio Cannabis Rights Amendment just failed in Ohio, it will be back. Proposals may allow use, possession and production of cannabis by adults for **medical and recreational use**, and would also allow for the production and sale of hemp.

**Medical Marijuana:** Would allow patients with qualifying diseases to register to be able to **grow or use cannabis for medicinal purposes at a doctor's recommendation**. This bill is already being considered by the Ohio Legislature and may be fast-tracked for passage in 2016.

**Legalize Ohio 2016:** Would allow adults in Ohio to consume marijuana in private settings, but not in public, for any purpose. Adult Ohioans would be allowed to grow up to six plants per person at home, and would not have to buy a license.
What was particularly disconcerting for many employers is that the Ohio Cannabis Rights Amendment sought to specifically dictate to employers what they may and may not do in regards to employees and their use of marijuana.

That proposed Amendment to Ohio’s Constitution sought to require scientific proof of impairment before a medical marijuana user could have been considered to be “under the influence” and in violation of zero tolerance workplace policies.

However, there is currently no objective scientific standard to conclusively PROVE marijuana impairment in Ohio. This provision of the law was viewed as being particularly radical, as it could have significantly undermined the ability of employers to address marijuana impairment by employees in the workplace.
Federal Government Statement

- Department of Justice issued guidelines for federal prosecutors in states that enacted laws authorizing the use of medical marijuana (October 2009).

- "It will not be a priority to use federal resources to prosecute patients with serious illnesses or their caregivers who are complying with state laws on medical marijuana, but we will not tolerate drug traffickers who hide behind claims of compliance with state law to mask activities that are clearly illegal."

- "This balanced policy formalizes a sensible approach that the Department has been following since January [2009]: effectively focusing our resources on serious drug traffickers while taking into account state and local laws."
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Federal Laws
• Controlled Substance Act of 1970
• Drug-Free Workplace Act of 1988
• US DOT Regulations / OTETA 1991
• US OSHA
  – General Duty Clause
• 2016 Omnibus Federal Spending Bill
  – Sec 763—No federal money may be used to interfere with the industrial hemp industry
  – Sec 542—Prohibits DOJ from interfering with state laws legalizing medical marijuana

State Laws
• ORC 153.03 – DFWP Public Projects
• ORC 4123.54 Rebuttable Presumption
Up to now, most lawsuits filed in states with marijuana laws have ruled in favor of the employer because of two factors:

1. **Marijuana continues to be illegal at the federal level**; and

2. **States with earlier legislation have not directly addressed employers’ actions around the use of medical marijuana**.

Still, even though employers have been winning these cases so far, these lawsuits costly in terms of time and money spent fighting them.

Please note: Federal legislation such as the *Respect State Marijuana Laws Act*, the *Compassionate Access, Research Expansion, and Respect States Act of 2015*, and the *States’ Medical Marijuana Patients Protection Act* have been introduced seeking to reconcile federal guidelines with state laws legalizing marijuana. The passage of these laws may make it decidedly more difficult for employers to maintain and enforce a 100% drug-free workplace.
Important Guidelines for Employers:

- **Private sector:** The *Drug-Free Workplace Act of 1988* prohibits employers who receive federal funds (contracts/grants) from accommodating the medical or recreational use of marijuana, even if state law allows it. (State level: BWC’s Drug-Free Safety Program).

- **DOT Regulations: CFR 49** prohibits the use of marijuana (medical or otherwise) for all safety-sensitive transportation workers.

- **OSHA Standards:** Employers are responsible for taking all reasonable measures to provide safe work environment.
Considerations for Employers

Important Court Decisions for Employers:

• **Ross v. Ragingwire Telecommunications, Inc**
  Drug testing is legal and not discriminatory when applied fairly.

• **Timmons v. General Motors**
  Court ruled that the ADA cannot force employers to walk razor’s edge when making accommodations for workers.

• **Coats v. Dish Network**
  Court affirms right of employer to discharge medical marijuana user who tested positive in violation of zero tolerance policy.

• **Roe v. TeleTech Customer Care**
  Court ruled that state law provides no protection for employment and specifically noted that the law did not require employers to make any accommodation regarding employees use of medical marijuana
As Things Now Stand...

- For now, the federal government still considers marijuana to be a Schedule I Controlled Substance (with no redeeming medicinal value, similar to cocaine or heroin).
- For now, Ohio employers still have the right to insist that workers are drug-free while at work, and may still forbid the presence of cannabis metabolites in their employees.
- A clear written policy is a critical component of any effective drug-free workplace program, and **must clearly state the company’s position on the use of medical marijuana**.

Make sure your company’s policy is crystal clear in defining:
- prohibited behaviors for ALL employees, including management,
- consequences for policy violations,
- drug testing (when, how, drugs to be tested for, protections).
As Things Now Stand...

• Moving forward, particularly if marijuana is legalized in Ohio, companies must focus the emphasis of their substance abuse policy toward **FITNESS FOR DUTY**.

• All *supervisors* must undergo **intensive training** in the recognition of the signs and symptoms of substance abuse.

• Moving forward, whenever possible, disciplinary actions should be based on **reasonable suspicion**, and performance issues, rather than relying on a positive drug test result alone, to trigger a violation of your company’s drug-free safety policy. **Good documentation is key.**
1. Get and stay informed, making sure to read proposed legislation (including the fine print) to learn first-hand precisely what it says.

2. Formulate a workplace-centered opinion of the issue. Try to use apply a reality-based, “nuts-n-bolts” analysis of how the legislation may impact your company, and then proceed accordingly.

3. Be an active part of this discussion. Make sure that your elected representatives understand your position on these issues, so that they can accurately represent your interests.

4. Educate employees so they, as voters, can make informed decisions. Legislation is often deliberately misleading with hidden “small print”. Cut through the bull for your employees.

5. Review your drug-free workplace policy and program and know what it says about medical marijuana. Revise your policy to reflect your values and beliefs.
Questions & Answers