

Detecting, documenting employee impairment

Arizona lawmakers last year passed a law that provides protection to employers that may wish to terminate workers who are under the influence of medical marijuana by spelling out what to look for in determining if an employee is impaired.

The need to define impairment arose because of language in Arizona's voter-approved medical marijuana law that protects workers, who are registered users, from being terminated if they test positive. At the same time, the law is clear that workers may not use or possess the medical pot at their place of employment.

To ensure your workers are not impaired at work, employers can use the guidelines presented in HR 2541, said SCF Arizona Legal Compliance and Risk Manager Bobbie Fox.

The bill defines impairment as: "symptoms that a prospective employee or employee while working, may be under the influence of drugs or alcohol that may decrease or lessen the employee's performance of the duties of their job position."

The bill covers any controlled substance, including prescription medications. Impairment from use of medical marijuana is difficult to detect.

"The problem with marijuana is that unlike alcohol, there is no measureable standard for impairment," Cox explained. "Impairment has to be proven in order [for the employee] to be disciplined."

Making the determination of whether a worker is impaired is a "judgment call," which employers, workplace supervisors or managers have to make. The bill defining impairment can help.

Fox stressed that Arizona employers need to know their rights in detecting and documenting impaired employees.

Fox said the indications of impairment are physical and behavioral. Below are some symptoms of marijuana impairment:

- Red, bloodshot eyes
- An odor of marijuana (a musky, earthy, sometimes skunk-like scent)
- Difficulty or sluggishness in coordination, speech, movement or dexterity
- Unusually increased hunger or thirst
- Irrational or unusual behavior
- Negligence or carelessness in operating equipment
- Difficulty in performing production and manufacturing processes
- Disregard for safety
- Involvement in an accident that results in serious damage to equipment

The law permits employers acting in "good faith" to document their workers' behaviors if impairment is suspected. The bill defines "good faith" as:

- Observed conduct, behavior or appearance
- Information reported by a person believed to be reliable, including witness reports of possession or use [of controlled substance] at the workplace
- Drug paraphernalia at work
- Written, electronic or verbal statements



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- Lawful video surveillance

Fox said an employer documenting impairment of an employee should gather observational evidence and, if possible, seek out a witness who can confirm the findings. If the employer can document impairment at the workplace, then the offending employee can be punished according to the company's human resource policies.

However, Fox warned that the company needs to make sure its rules on drugs and alcohol in the workplace, as well as on reasons for termination, need to be described clearly in personnel policies so the company's workers understand them.

