

CBD in the workplace: What does it mean for you?

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With Virginia's new medical cannabis laws taking effect, there are a lot of questions about the impact the use of medical cannabis products may have in the workplace. At present, Virginia's cannabis laws are limited to CBD (cannabidiol) oils and other products with low amounts of THC (tetrahydrocannabinol, the active ingredient in marijuana). But that doesn't mean issues won't arise from your employees who may be using such products.

CBD oil is extracted from the marijuana plant and has made an appearance in the news recently due to its pharmaceutical properties, void of the "high" typically associated with THC. Presently, Virginia law permits cannabis oils with at least 15 percent CBD oil or THC-A and no more than five percent THC.

New Virginia laws

Addressing medical cannabis last year, Governor Ralph Northam signed into law **House Bill (HB) 1251**, which expanded legislation to allow Virginia doctors greater flexibility in deciding the medical conditions they deem appropriate for prescribing medical cannabis. Previously, the law limited the medical use of cannabis to intractable epilepsy.

As of July 1, 2019, Virginia law "allows capsules, lozenges, and patches, and a limit of 10 milligrams of THC per dose." The adjusted dosage puts Virginia on the same level allowed in California and Washington state for medical marijuana use.

Despite the growing number of laws in Virginia pertaining to medical cannabis use, CBD oils, and their medicinal properties, there remains an anomaly in the state's criminal laws. As it stands now, the laws do *not* legalize medical cannabis use or CBD oil. They simply provide what is called an *affirmative defense* to its use. Through this affirmative defense, individuals can lessen or avoid the legal penalties if they are caught and charged for illegal possession of cannabis or its low-grade oil. So, although CBD oil doesn't contain any of

the psychoactive components associated with THC and can be found at health stores and state-instituted dispensaries, under Virginia law, it's still considered illegal.

Impact on the workplace

What do these changes in the law mean for Virginia employers? According to the National Conference of State Legislatures, only a few states are working on addressing "the possibility of employees being under the influence of medical cannabis during the course of their employment." Unfortunately, Virginia isn't one of the states, so Virginia employers are left in the unenviable position of facing great uncertainty. As a result, policies regarding the medical use by your employees of CBD oil and other types of medical cannabis are basically left up to you.

With doctors having the ability to prescribe cannabis for a wider range of medical conditions to their patients, the lines become increasingly blurred for handling issues involving cannabis (in all its various forms) in your workplace. This is particularly a difficult situation since medical cannabis and CBD oil still live in a gray, but *illegal*, area of Virginia law. Additional legislation is being considered to address the growing field of medicinal and recreational marijuana uses more directly. But for now, there are no hard and fast rules for you to follow.

Bottom line: Proceed with care

At this point, probably the best advice is to stick with your existing policies and procedures for dealing with drug use in your workplace. First, there's no question you can prohibit your employees from being under the influence of any drugs (as well as alcohol) that would negatively affect their abilities to do their jobs safely.

Second, if you conduct drug testing of your job applicants or employees, you can continue to do so. The level of THC in the cannabinoid oils or other products Virginia physicians may prescribe for medical use

should be lower than the level that would yield a positive result in any drug testing you institute.

If for some reason an applicant or employee who is using medicinal CBD tests positive for THC, you can still verify she has been legally prescribed CBD and assess whether CBD use would prevent her from safely performing her job functions. In making such an assessment, it's important for you to consult with an experienced healthcare provider who can advise you of the job-related impact of an employee's CBD use. You also should contact experienced employment counsel who can ensure the steps you may take pass legal muster under the various laws affecting the workplace, including the Americans with Disabilities Act (ADA). Given the present legal uncertainty, it's wise to make sure that before you take any job action, you have a strong factual and legal basis for your decision.

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