



Litigation Alert: January 2010

### **Drug Free Workplace and Medical Marijuana**

Since Colorado legalized the medical use of marijuana, employers are questioning whether their drug free workplace policies are still enforceable.

Colorado's Constitution, Article XVII, Section 14 allows the use of marijuana for person suffering from debilitating medical conditions....BUT....does not require employers to accommodate the medical use of marijuana in any workplace.

### **Federal law still considers the possession or use of marijuana illegal!**

How do employers deal with these conflicting laws?

The key is to review existing policies and clearly state that employees will still be subject to discipline and/or termination for violating a zero-tolerance policy. Employers must provide a drug free, safe work environment.

Remember, when an employer makes an accommodation to an employee, it is the exception to a policy which is normally driven by a specific factual situation.

We hope to see some clarity in the laws coming out of the current legislative session. In the mean time, the most prudent advice to employers is to review the zero tolerance policies and be prepared for changes in the law regarding the regulation of medical marijuana.

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