



TULLY RINCKEY PLLC
YOUR LAWYERS FOR LIFE - 1888LAW4LIFE.COM

Director of Legal Services Neil McPhie, Esq. says employees must abide by federal ban on medical marijuana.

Employees must abide by federal prohibition of medical marijuana

By Anjali Patel, Esq.,

cyberFEDS® Legal Editor Washington Bureau

April 29, 2014

IN FOCUS:

Now that the District of Columbia and some states have legalized the use of medical marijuana, agencies should remind their employees that marijuana use is still prohibited by federal law even when used for medical purposes. This means that agencies can still discipline employees for use of medical marijuana, Neil McPhie, the director of legal services at Tully Rinckey PLLC, told cyberFEDS®. Under federal law, the Controlled Substances Act categorizes marijuana as a prohibited Schedule I controlled substance, which:

Has no currently accepted medical use in treatment in the United States

Lacks accepted safety for use under medical supervision

Even if individual states recognize that marijuana has a medical purpose when administered under a doctor's supervision, federal agencies with facilities in those states still have to abide by the federal prohibition. Therefore, federal employees who use medical marijuana while on duty may be held accountable, said McPhie. And at times, even off-duty use of medical marijuana may be subject to discipline

depending on the nexus between the position and the marijuana use, he added. For example, an individual with a high-level security clearance could be disciplined if off-duty medical marijuana endangered the person's ability to fulfill the position's obligations, McPhie explained. And a police officer may be disciplined because off-duty medical marijuana use violates the position's duty to uphold the law, he said. Nonetheless, employees may bring up the use of medical marijuana for purposes of mitigating the penalty, noted McPhie. However, whether using marijuana for legitimate medical reasons actually weighs toward mitigation will depend on the reviewing authority. The fact is that "whether in prescription form or otherwise, it's a Schedule I drug and therefore illegal under federal law," he said. No ADA coverage

A common concern is whether disciplining for medical marijuana use could somehow violate the Americans with Disabilities Act or the Rehabilitation Act. The ADA does not cover the use of illegal drugs, McPhie pointed out, so disciplining employees for medical marijuana won't be a violation of the ADA because they would be using an illegal drug. In *James, et al. v. Costa Mesa, City of, et al.*, 112 LRP 55025 (9th Cir. 11/01/12), the 9th U.S. Circuit Court of Appeals found that the doctor-recommended marijuana use prohibited by federal law is illegal use of drugs under the ADA, even if the state has legalized such use. Therefore, the city's decision to close medical marijuana dispensing facilities located within its boundaries did not violate the ADA. McPhie explained that the substance "has to be 100 percent legal to come under the ADA definition." This also means that agencies never have to get to the question of reasonable accommodation for the use of medical marijuana, said McPhie. Developing area

With medical marijuana, "states continue to be the incubator for change," McPhie said. Some states have gone as far as to "prohibit using medical marijuana as a basis for disciplining state employees," he added. But to legalize medical marijuana on the federal level, "Congress would have to pass something to amend the Controlled Substances Act." This area is definitely still developing, though, so "we are likely to see some cases in the future," McPhie said. Reprinted with permission from: cyberFEDS® on the Web, Copyright © 2014 by LRP Publications, 360 Hiatt Drive, Palm Beach Gardens, FL 33418. All rights reserved. For more information on this or other products published by LRP Publications, please call 1-800-341-7874 or visit our website at:

www.cyberfeds.com
or www.lrp.com

▪