LEGAL MARIJUANA: IMPACTS ON THE WORKPLACE, BUSINESS AND SAFETY

Presented by:

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Why Are We Here?

- Marijuana of Today
- “Regulation and Taxation of Marijuana Act” Proposed Law
- Legal Analysis and Impacts
- Colorado and Other States with Legalized Marijuana
- Workplace Trends & Concerns
- Employer Rights & Responsibilities
TODAY'S MARIJUANA

- Higher THC than we’ve ever seen before
- Longer lasting impairment
- New delivery systems that are beyond our standard thinking
- Confusing lack of standards regarding how to handle private use by employees
- Edible products complicate the issue
**What Does Schedule 1 Controlled Substance Mean?**

- There is a high potential for abuse
- Lack of any accepted medical use
- No accepted safety standards for use under medical supervision
- Unable to regulate dosing standards

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**Regulation and Taxation of Marijuana Act**

- 20 pages of new laws, sponsored by Marijuana Policy Project of AZ
- “Voter-protected”
- Authorizes a commercial for-profit industry that sells an addictive product
- Gives medical marijuana dispensary owners a monopoly on retail licenses – and the profits
- Reorganizes Arizona’s laws to protect users of marijuana over all others
  - Reverses decades of laws to create drug-free work places
  - No federal “opt-out”
  - Endangers public safety with marijuana-impaired drivers
Regulating “like” alcohol

ALCOHOL
- Cost $185 billion annually
- $10 of loss for every $1 spent
- #1 Reason for Addiction in the U.S.
- Breath Alcohol Tests = blood alcohol content affecting the brain through oxygen/blood exchange
- Rate of elimination from body is fairly standardized
- DUI Limits standardized

MARIJUANA
- Costs are as yet unknown
- No limits on THC
- #2 Reason for Addiction in the U.S.
- Impairment has no measurement
- Fat soluble – highly individualized
- Impairment with stronger THC lasting for 1-3 days
- Sub-acute impairment in discovery

Proposed A.R.S. § 36-2860(A)

Notwithstanding any other law, except as otherwise provided in this chapter, it is lawful in this state and may not be used as the basis for prosecution, penalty or seizure or forfeiture of assets for a person who is at least twenty-one years of age to:

1. Possess, use, purchase, obtain, process, manufacture or transport marijuana accessories or one ounce or less of marijuana, not more than 5 grams . . . .

2. Possess, produce or process not more than six marijuana plants for personal use at the person’s personal residence and possess the marijuana produced by the plants on the premises where the plants were grown if no more than twelve plants are produced on the premises at one time.
Proposed A.R.S. § 36-2860(A)

Proposed ARS § 36-280(A)
- “Notwithstanding any other law”
  • Supersedes any other law that would penalize MJ use
  • Lawful to possess marijuana and paraphernalia
  • Can limit consumption in the workplace

Proposed A.R.S. § 36-2860(B)

“A person may not be penalized by this state for an action taken while under the influence of marijuana or a marijuana product solely because of the presence of metabolites or components of marijuana in the person's body or in the urine, blood, saliva, hair or other tissue or fluid of the person’s body.”
**Traffic Safety**

http://www.drugabuse.gov/news-events/news-releases/2014/05/more-colorado-drivers-in-fatal-car-crashes-testing-positive-marijuana
http://www.nbcnews.com/health/health-news/pot-fuels-surge-drugged-driving-deaths-n22993

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**Proposed A.R.S. § 36-2860(B)**

**Impact on Public Safety Laws**

State’s ability to enforce its DUI A3 law
- Current law forbids anyone from driving while actually impaired
- Currently forbids driving with any drug or metabolite in person’s body; ZERO tolerance

State’s ability to enact a DUI-THC per se law
- Hampers the State’s ability to establish a “legal limit”
RTMA “does not require an employer to allow or accommodate the possession or consumption of marijuana . . . in the workplace and does not affect the ability of employers to enact and enforce workplace policies restricting the consumption of marijuana . . . by employees.”

“This chapter . . . does not prevent . . . imposition of . . . penalty on any person for:
(7) Performing any task while impaired by marijuana or a marijuana product that would constitute negligence or professional malpractice.”
Under RTMA, to take employment action (based on a policy), employer must prove:
- Impairment
- Negligence or professional malpractice

Undefined:
- Impairment
- Negligence (duty, breach, causation, & damages)

Result: To take action, must prove your agent was negligent.
- Post-incident discovery for those damaged?

Impact: ARS § 23-493, which allows drug policies
- Old law = Positive tests may lead to discipline
- New law = cannot be penalized for having marijuana in your system (unless negligent or professional malpractice)
- Very large “gray area” about available restrictions
There Is No Federal “Opt-Out” Provision

Businesses that have federal contracts or otherwise must comply with federal drug-free workplace rules must comply with both federal and state law.

Government-Regulated Employers

- Some industries more regulated than others:
  - Department of Transportation safety sensitive duties
  - Heavy machine operators
  - Healthcare practitioners (Board representation)
  - Food Safety Modernization Act
- Government regulations prohibit employee from taking part in activity; do not always prohibit employment
- Regardless, no exception in Arizona
Expectations

• Wrongful termination suits will increase
  - Settlements will increase due to costs of litigation
• Increased regulatory enforcement
  - Creates new Commission and Department
  - Jurisdiction not limited to just “licenses,” but rather “enforcement of the chapter”
  - Private Attorney General actions?
• Increased workers’ compensation (no longer an exception for drug use)
  - 5% discount for drug policies will be eliminated

Impact

• Revise untested policies and procedures
  - Expect litigation
• Notification of non-compliance to Government Contracting Officers
• Notification of non-compliance to Government Regulators
• Costs associated with “benched” employees
• Paraphernalia is completely legal
• Creation of protected monopolies
• Impact on future workforce
C. This Chapter does not prohibit a person who owns, manages or leases a property from prohibiting or otherwise regulating the smoking, production, processing, manufacture or sale of marijuana and marijuana products on or in that property.

D. This Chapter does not prohibit a person from prohibiting or otherwise regulating the possession or consumption of marijuana and marijuana products on or in property the person owns, manages or leases if either:

1. The property is a public building that is held or owned by this state or any political subdivision of this State.

2. Failing to prohibit the possession or consumption of marijuana or marijuana products would cause the person who owns, manages or leases the property to lose a monetary or licensing-related benefit under federal law or regulations.

According to the FBI’s Preliminary Uniform Crime Report for 2015, the number of violent crimes in Anchorage (the only city reporting for Alaska) increased 24% compared to the same period in 2014. Murders were up 167%, and aggravated assaults increased 32% versus the first six months of 2014.

The increase in violent crimes that occurred at the same time pot was legalized is striking. Between 2006 and 2014, the number of violent crimes was stable. Once marijuana legalization took place in early 2015, the crime rate went up dramatically.
Marijuana Campaign Promises

- Regulation Works
- Eliminate Black Market
- Keep Away from Youth
- Regulate Like Alcohol
- Millions in Tax Revenue

NOT THE POT OF 60’s . . . or the 90’s

Today’s legal marijuana comes in many forms:
in candy, in snacks
in food for breakfast, lunch or dinner
in drinks
in waxes - inhaled - vapor - dabbed
in drops - absorbed - inhaled
in capsule - swallowed
in plants - smoked
Colorado Regular Marijuana Use Rate Highest in U.S.

Colorado Youth Use Rate 74% Higher Than National Average
Colorado Ages 26 + is 103% Higher than National Average
April 2014
Levy Thamba Pongi, 19 year old student, leapt to his death after consuming marijuana-infused cookie while visiting Colorado


March 2015
While on a ski vacation in Colorado, 23 year old Luke Goodman ate several marijuana-infused candies. Shortly after, he died of a self-inflicted gun shot wound to the head.
Amendment 64 Promises

- Bolster Colorado's Economy with job creation and new tax revenue of $120 million annually and savings over 5 years
- Generate $40 million annually for the Building Excellent Schools Today (BEST) capital construction fund


“You don’t create new money. The amount of money in any economy is finite. People will simply take money from other needs, such as food, sneakers, or school books and spend it on marijuana.”

– El Paso County Commissioner, Dennis Hisey
Amendment 64 REALITY

- $120 million per year projected: $44 million → 2014

- Generate $40 million annually for the Building Excellent Schools Today (BEST) capital construction fund: Approximately $2 million → 2014

- Tax plan conflicts with TABOR
  - Solution as yet UNKNOWN
  - Costs of regulation as yet UNKNOWN

The Lazy Lion

We’ve got the best WAX and SHATTER you’ll find anywhere... and the ONLY place you can come enjoy a DAB and relax with friends.

Enjoy a DAB at the bar any time of day for only 32¢! DABBY-HOUR is every day from 4pm-5pm where you can come in and get 15¢ DABS!!!!

Even with our varied selection of Wax and Shatter you are always welcome to bring in your own and even your own pieces!

Dabby Hour From 4PM - 5PM $1 DABS
$50 cash reimbursement covers vehicle fuel for a marijuana “donation” delivered to your home
Marijuana Businesses

Starbucks

McDonalds

Denver, CO

390

25

233

Marijuana Businesses

Starbucks

McDonalds

2015 - ONE YEAR IN COLORADO

- 29% increase in marijuana-related Emergency Room visits
- 32% increase in marijuana-related traffic fatalities
- 38% increase in marijuana-related hospitalizations
- 72% increase in marijuana exposures
- School suspensions /expulsions +40% since 2008
- THC-positive drug tests in workplace increased from 6% to 20% in first year of legalization

Rocky Mountain High Intensity Drug Trafficking: “The Legalization of Marijuana in Colorado: The Impact vol 3 2015”
What are the Costs?

For 2013/2014 ONLY

MJ Related ER Visits = $145,800,000

MJ Related Traffic Fatalities = $230,000,000

MJ Related Hospitalizations = $438,500,000

$814,300,000
What are the Costs?

One Year of Costs: $407,150,000
One Year of Profit: $-44,700,000

Losses of: $362,450,000 on 3 Issues
Colorado’s Total General Fund Revenue, FY 2015*

*Preliminary Numbers based on June 2015 Forecast

SOURCE: Colorado Office of State Planning and Budgeting. June 2015 Forecast (eleven months of data)

- Total marijuana tax revenue (medical and recreational) for FY2015 comprises 7/10 of 1 percent (0.7%) of Colorado’s total general fund revenue.

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“If I had a magic wand that I could have waved and reversed the decision of the voters … the day after the election, I would have waved my wand.”

— Gov. John Hickenlooper
What is the Discussion REALLY About?

- The right to Drug-Free vs. the right to Drug-Use
- Safety vs. Liability
- Responsibility vs. Culpability
- Productivity vs. Loss/Risk Control

EMPLOYER CHALLENGES

Noon on Thursday:
6 company trucks
8 company logos on shirts

Colorado Springs
Gas & Grass Station
Jim Johnson said his company has encountered so many job candidates who have failed pre-employment drug tests because of their THC use ... it is actively recruiting construction workers from other states.

GE Johnson

http://gazette.com/drug-use-a-problem-for-employers/article/1548427

http://www.questdiagnostics.com/home/physicians/health-trends/drug-testing

Looking Outside the State for Qualified Employees

Quest Diagnostics Drug Test Index™

Workplace Pos MJ Tests: Increase from 2012-2013
“Every existing Colorado law that is not compliant with Amendment 64 should be changed .... because an employee’s Constitutional Right to use marijuana supersedes an employer’s right to drug test.”

– Kimberlie Ryan, Atty
QUESTIONS?