



OSIA Position Paper on Medical Marijuana in the Workplace

- 1. Current state of medical marijuana** - The Medical Marijuana Act as originally enacted by Oregon voters is not at all what the program has become. Medical Marijuana was sold as an alternative medicine for the sickest people and those with terminal illnesses. The facts are:

 - As of January 1, 2008: 15,927 patient cards, 7,735 caregiver cards, 4,000 growers, 1,700 new or renewal applications monthly and at least 38,000 pounds of marijuana
 - Only 500 applications annually were predicted when OMMA was passed in 1998.
 - Department of Justice survey estimated 40% of growers have violated one or more laws, often growing more than the six mature plants allowed per patient.
 - Oregon State Police report 15 of 46 illegal crop seizures in 2006 involved medical marijuana growers.
 - Cards are being issued for common afflictions such as asthma, muscle pain and menstrual cramps.
 - Medical marijuana cards are a one year open prescription. There are no dosage guidelines. All other pharmaceuticals prescribed by physicians also contain a prescription for dosage and use i.e. 1 pill 4 times a day. Nothing is currently in place to protect workers from overuse.

- 2. So called “hazardous” duties list is incomplete** - It is our position that no employer be required to accommodate medical marijuana in the workplace. Employers do not currently have to accommodate employees who show up under the influence of alcohol. It is well known that marijuana and alcohol both impair judgment, reaction time, coordination, etc., so why do marijuana users get special treatment? The liability exposure for lawsuits against employers who’s “under the influence” employees end up injuring third parties is immense. Will insurance coverage even be available to such employers?

Under the current bill, here are a few of the positions that medical marijuana would have to be accommodated with little consideration given to medically-verified levels of impaired function:

- Healthcare Providers, Teachers, Childcare Workers, Movers, Warehouse Workers, CPAs, Law Enforcement Employees, Lawyers, Judges, Court Reporters, Notaries, Postal Employees, Emergency Responders, 911 Operators, Firefighters, Cooks, Car Mechanics, Airplane Mechanics, Train Engineers, Electricians, Welders, and Legislators.
- Any and all jobs require some type of sound judgment making. Imagine the importance you place in your surgeon or the person taking care of a loved one's ability to make sound judgments. These concerns are NOT dealt with in the hazardous duties list.
- It would be administratively impossible to ever create a list of hazardous duties that would be sufficient, especially considering those duties that may not appear to be hazardous on the surface, but still require sound judgment making. A surgeon may not appear to be involved in hazardous duties, but their patient may have a different opinion.

3. Magnet effect - If Oregon becomes the first state to require a marijuana accommodation, we will in effect become a magnet for marijuana users. This will only add weight to the extreme inertia already created by those that want to totally legalize marijuana in Oregon. This will be a detriment to attracting businesses to Oregon. If Oregon is the only state that allows for this accommodation, many businesses will simply pass on moving here.

4. Federal issues – By requiring Oregon employers to accommodate a medical marijuana card holder, we are now at a state level regulating what is considered a schedule I drug (along with LSD and Heroin). Additionally this does nothing to exempt employers from the federal Drug-Free Workplace Act of 1988. Hence, this will create more confusion and will invite the federal government to begin a more heavy handed approach in dealing with Oregon's medical marijuana laws. In fact, many Oregon employers will encourage the federal government to get more involved.

5. Impairment testing –not ready for primetime

- There is no case history of any kind approving employer use of impairment testing.
- Oregon law does not approve commercial impairment testing for law enforcement purposes.
- Very few companies offer a product. The National Workrights Institute report only 6 businesses have manufactured systems for employers and 3 of them went out of business.
- There are high initial and ongoing costs.
- How would you ever appropriately train enough managers to use the equipment?
- No generally accepted basis in research.

- No information regarding compliance with Uniform Guidelines on Employee Selection Procedures.
- License agreements require employer users to indemnify the manufacturer if sued.
- No legal authority to support employer uses, contrasted to urinalysis drug testing as approved by the U.S. Supreme Court.
- Will out-of-state manufacturers support Oregon employers and laws in litigation over their products?
- This would be unduly burdensome on small employers.

6. Summary and Solutions

- Current application of the OMMA is not what was intended, and it is leading to increased illegal activity.
- Oregon employers are conflicted between accommodating a medical marijuana card holder, which was never the intent, and allowing employees to work under the influence of a federally illegal substance in the workplace.
- Oregon workers are put at risk by being subject to actions of co-workers under the influence of a federally illegal substance and one that negatively affects good judgment. This was never the intent of the OMMA.
- Patchwork attempts are currently being made, such as limiting potential accommodation of medical marijuana in the workplace by defining hazardous duties. This is not administratively feasible and does not get at the root of the issue.
- The better solution is for Oregon employers and workers to join in a comprehensive solution for reducing substance abuse in Oregon and to return the OMMA to its originally intended purpose. We must develop and maintain a healthy and productive workforce.