Is “Cannabis User” the Next Protected Class in California?

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Years after California legalized recreational use of cannabis, employers continue to struggle with determining their rights and liabilities regarding employees who engage in that activity.

In 2016, a majority of California voters approved Proposition 64, titled “The Control, Regulate and Tax Adult Use of Marijuana Act” (Prop 64). Prop 64 permits adults 21 years of age and over to possess and grow specified amounts of cannabis for recreational use.

That said, Prop 64 did not address the myriad implications of allowing recreational use of cannabis, including employers’ rights and obligations to employees who choose to engage in that activity. Further confusing the issue has been employees who use marijuana to treat an illness pursuant to the Compassionate Use Act of 1996.

Recently, Assemblymen Rob Bonta introduced Assembly Bill 2355, titled “Employment discrimination: medical cannabis” (AB2355). The bill seeks to make it...
an unlawful employment practice for an employer to refuse to hire or employ a
person, to discharge a person from employment, or to discriminate against an
employee, because of the employee’s status as a medicinal cannabis user.

**Bonta introduced a similar bill in 2018**, which failed. In an apparent effort to secure
a different result for AB2355, Bonta has included some exceptions to the proposed
protections.

First, employers may still refuse to hire applicants or terminate current employees,
if retaining the person would cause the employer to:

- Lose a monetary or licensing-related benefit; or
- Incur damages under federal law or regulations, including the Department of
  Transportation regulations.

Further, if the employer requires all employees and job applicants to be drug and
alcohol-free for legitimate safety reasons as required by federal or state laws, the
employer will not be subject to the requirements of AB2355.

The bill also specifically provides that employers would still have a right to refuse
accommodation, suspend an employee, or take any other lawful action if the
employer discovers the employee is using or impaired by medical cannabis at work
or during working hours.

With these more specific carve-outs, AB2355 may have a higher likelihood of success
than Bonta’s prior attempt at legislating this issue.

Even if the bill does not pass, employers should ensure they are complying with
other requirements of California law that pertain to employee drug testing and
disability accommodation.

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