



CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

Caught In The Weeds: Reconciling Massachusetts And Federal Laws About Marijuana

BY AIVI NGUYEN • JUNE 15, 2017

In Massachusetts, medical marijuana has been legal since 2013. People need only obtain documentation from their physicians certifying that they suffer from a debilitating medical condition and the use of medical marijuana helps alleviate some of their symptoms. But, without a valid medical marijuana card, it was still illegal to possess or use marijuana. This was true until last year, when the people of the Commonwealth voted to decriminalize marijuana altogether. Now, recreational marijuana use is legal for anyone 21 or older. This means that as long as you are 21 or older or have a valid medical marijuana card if you are under 21, you are free to use marijuana at your discretion.

Does that mean that Massachusetts colleges and universities must let students or employees use marijuana on campus if they are older than 21 or have a valid medical marijuana card? No. While the state has loosened up about marijuana use, the federal government has not. Marijuana is still a Schedule 1 drug in the Controlled Substances Act. Schedule 1 drugs are considered the most dangerous and are determined to be drugs, substances, or chemicals with no currently accepted medical use and a high potential for abuse and dependence. Other Schedule 1 drugs include heroin, LSD, ecstasy, bath salts and Quaaludes.

Because marijuana is still illegal under federal law, schools must prohibit possession, use, and distribution of it on campus, on any property owned by the school, or at school sanctioned events off-campus. This should be clearly stated in all student and employee handbooks and must be included in a school's drug and alcohol program pursuant to the Drug-Free Schools and Communities Act. Otherwise, the school runs the risk of losing its federal funding.

But how can a school reconcile federal law and state law? Fortunately, there are carve-outs to both the medical marijuana law and the recreational marijuana law. A Massachusetts school that bans the use, possession, or distribution of marijuana is not violating any rights of students or employees. Both the recreational marijuana law and the medical marijuana law do not require adherence if it would violate federal law. This means that a school does not have to permit marijuana use on campus or at school events because that would force the school to violate the Drug-

Free Schools and Communities Act. Under the recreational marijuana law, a property owner does not have to allow recreational use of marijuana on his or her property and an employer is not prohibited from banning marijuana use by employees. Similarly, the medical marijuana law does not require that employers accommodate an employee's usage of marijuana while at work.

The bottom line is that until marijuana is decriminalized on a federal level, colleges and universities must still treat it as a prohibited drug.

Client Tip: *Given the potential confusion between state and federal law, schools should discuss marijuana specifically in their handbooks and drug and alcohol policies.*