



MIHAYLO COLLEGE  
OF BUSINESS AND ECONOMICS

# MGMT 518

## Legal, Ethical, Environment Of Business

**How should an ethical business handle an APPLICANT who requests reasonable accommodation under the Americans with Disabilities Act for medical marijuana?**

A Report by

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### **Thesis Statement**

Marijuana, also known as Cannabis has been legalized for medical purposes in many states other than California, but its manufacturing, distribution and possession has been restricted under federal law and is a criminal offense. It is challenging for employers to tackle such situations under several anti-discrimination laws as there are conflicts between federal and state laws. Would it be ethical for companies to allow the use of medical marijuana in the workplace? What would be required by employers to stay within state and federal laws? What types of acts will help companies understand the necessity to use medical marijuana by its employees?

## **A. International Laws**

The United Nations Office on Drugs and Crime (UNODC) introduced the International Drug Control Conventions which was joined by many countries including The United States of America to control the use of drugs and prohibit their manufacturing and distribution. (UNODC)

### **1) Single Convention on Narcotic Drugs of 1961 as amended by the 1972 protocol**

#### Article 21 (1). Limitation of Manufacture and Importation

The total quantity of each drug manufactured or imported by any country in any one year shall not exceed the sum of the following:

- i) The amount consumed for medical and scientific purposes within the estimated limit.
  - ii) The Quantity used within the estimated limit for manufacturing the drugs to prepare other substances which are not covered by this convention.
  - iii) The quantity exported
  - iv) The quantity added to the current stock to increase its level above estimated limit.
  - v) The quantity acquired within the estimated limit for special purposes.
- (UNODC)

#### Article 23. National Opium Agencies

One or more agencies shall be established under this article if a party permits the cultivation of Marijuana and the following provisions shall be applied:

- i) The agency shall permit the cultivation of Marijuana in particular areas and plot of lands.
- ii) Cultivators approved by these agencies will be permitted to cultivate Marijuana.
- iii) Each license will specify the extent of land for cultivation.
- iv) All the crops harvested will be purchased only by the agencies, not later than four months from the date of harvest.
- v) Agencies will have exclusive rights for exporting, importing, wholesale trading and maintaining stocks other than those held by the manufactures in the process. (UNODC)

#### Article 28. Control of Cannabis

- i) Cultivation of Cannabis or Cannabis Resin is according to the system of controls in Article 23.
- ii) Cannabis won't be cultivated exclusively for industrial or horticulture purposes.
- iii) Several measures are to be adopted by parties to restrict the illegal use of Cannabis plant leaves. (UNODC)

#### Article 33 Possession of Drugs

Possession of drugs is only possible under legal authority. (UNODC)

#### Article 34 Supervision and Inspection

- i) Everyone who acquires the licenses should be in accordance with this convention or by the power of managerial or supervisory positions in State enterprises, permitted under this convention.

- ii) All the related entities, i.e., governmental authorities, manufacturers, traders, scientists, scientific institutions and hospitals keep a record of drugs sold and disposed of for a minimum period of two years. In addition to this, the counterfoil books or official prescriptions given should be maintained for a minimum of two years. (UNODC)

## **2. Convention on Psychotropic Substances of 1971**

Psychotropic substance means any substance, natural or synthetic, or any natural material in Schedule I, II, III, or IV. According to the World Health Organization; the substance has a capacity to produce a state of dependence and central nervous system stimulation or depression and similar other ill effects. Marijuana comes under Schedule I annexed to this convention. (UNODC)

### **Article 7. Special provisions regarding substance in Schedule I**

- i) A Party shall restrict the use of marijuana except for scientific or very limited medical purposes authorized by the said institutions under the Governments control.
- ii) An individual requires a license or prior authorization for manufacturing, trading, distribution, and possession.
- iii) Close supervision is required in i) and ii)
- iv) An authorized person is supplied with restricted quantity; to the amount he is permitted to use.
- v) Forbid export or import except in cases where their country authorizes exporter and importer. (UNODC)

### **3. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.**

#### **Article 2. Scope of the Convention**

- i) To establish cooperation among countries to focus on various aspects of illicit traffic of Narcotic drugs and psychotropic substances internationally.
  - ii) There should be equality among the countries with non-interference in domestic affairs of other states.
  - iii) All the procedures are to be carried out within the boundaries of the law.
- (UNODC)

## **B. Federal Laws**

Congress introduced the Comprehensive Drug Abuse and Prevention Act in 1970 due to the rising use of different types of drugs and for their prevention. The laws before this act were not adequate, such as, in case of manufacturing, distribution, and possession which is a criminal offense. Title II – Control Substances Act (CSA), Schedule I, focuses on Marijuana as one of the most dangerous drugs considered by Congress.

### **1. Title II - Controlled Substances Act (CSA)**

This title signifies the government's war on drugs and the legal implications on manufacturing and distributing drugs used to make controlled substances. Under CSA there are Schedules I, II, III, IV, V in which Schedule I drugs are considered the most dangerous and Schedule V are considered the least dangerous. The act also simplifies the process for segregating a new drug into Schedules (I or II) according to its level of harm which makes this drug to be called as Controlled Substance analogue.

### **2. The drug-free workplace Act of 1988**

The act has different rules for Individuals and Organizations. More focus is on organizations since they have to take far-reaching, programmatic steps to achieve a work environment free of drugs. Usually, if a federal contractor or similar party need a contract or grant, then they have to meet the condition of providing a drug-free workplace.

The act does not apply to those who do not have a federal grant or contract. If any organization has grant which comes under the act but a contract which does not, then



they will be eligible and covered only for the grant part and not for the contract part. Although the organizations won't be required to provide a drug-free place for all its employees, it will be beneficial to do so as it can protect the company and its profits.

The penalties under the drug-free workplace Act of 1988 are as follows:

- i. Suspension of payment of contracts or grant activities.
- ii. Possible termination of grant or contract.
- iii. Restriction on participating in future grants or contracts awarded by a federal agency for a specific period not exceeding five years.

### **3. U.S. Equal Employment Opportunity Commission (US EEOC)**

After an individual is offered a job, a majority of the companies do background check as well as request the new employee to take a medical test. This helps the employer to understand if the employee is hiding any medical condition or is under some prescription and is not disclosing it or even in situations where an employee is under influence of illegal drugs like Marijuana. There are several conditions to this and the process is carried out according to the rules and regulations as per the law. The medical examinations are also carried out for present employees if the employer feels that the employee is unable to perform his respective duties successfully. Also, the employer is required to provide accommodation to employees with a disability unless there is 'undue hardship' for the employer. (US EEOC)

#### **4. American with Disabilities Act (ADA)**

Any employee or applicant who is currently engaging in the illegal use of drugs shall not be considered a qualified individual with a disability. Illegal use under ADA is nothing but use, possession or distribution of drugs which is unlawful under CSA except drugs taken by prescription. Medical Marijuana use is not considered a drug under ADA taking into account the federal laws, but the case may be different regarding state laws. Since marijuana is a Schedule I drug, it is not prescribed by doctors but may be recommended for use. Due to this companies should seek legal advice to understand if marijuana drug screening is required or if they should take action against an employee involved in marijuana use.

### **C. State Laws**

Many regions have legalized the use of Marijuana, although there are differences in the extent to which it is legal. In other words, regions can be divided into four categories, i.e., Adult-use, Medical use, Limited use and No use. The regions under these categories are as follows:

- Adult-use – California, Nevada, Washington, Oregon, Colorado, Alaska, Massachusetts, Maine.
- Medical use – Arizona, New Mexico, Montana, North Dakota, Minnesota, Michigan, Illinois, Arkansas, Ohio, West Virginia, Pennsylvania, Maryland, New Jersey, New York, Connecticut, Rhode Island, Vermont, New Hampshire, Florida, Hawaii.
- Limited use – Utah, Wyoming, Texas, Oklahoma, Iowa, Missouri, Louisiana, Mississippi, Tennessee, Kentucky, Virginia, North Carolina, South Carolina, Georgia, Alabama
- No use – Idaho, South Dakota, Nebraska, Kansas, Wisconsin, Indiana

Adult-use regions are those where marijuana is sold openly without any restrictions, may it be for medical use or just for recreational purposes. Medical use regions are those where marijuana is sold only for medical purposes. In case of limited use, the difference is in the quality of marijuana with high-CBD and low-THC oil. Finally, no use regions are those where marijuana is not used whether it is for medical or recreational purposes. (The cannabis Industry 2018)

#### **D. California State Laws**

November 8, 2016 voters approved the recreational use of marijuana as per the Adult use of Marijuana Act (AUMA) under proposition 64. According to AUMA, adults can grow up to 6 plants for personal use and can give no more than 1 ounce. Beginning January 1, 2018, state-licensed facilities can deal with marijuana as per the Medical and Adult use of Cannabis regulation and safety act (MAUCRSA) which was approved by the legislature in 2017. AUMA does not revoke, affect or obstruct the right of employers to maintain a drug and alcohol-free workplace or to have policies forbidding the use of cannabis by employees. (California NORML).

## **E. Cases related to the use of Marijuana**

### **1. Justin Shepherd Vs. Kohl's Department Stores**

United States District Court, E.D. California, 1:14-cv-01901-DAD-BAM (2016)

#### Case Background

Plaintiff, Shepherd worked for defendant, Kohl's Department Store as a material handler and signed a written contract with Kohl declaring that his employment is at-will in California from 2006. He was diagnosed with acute and chronic anxiety and was recommended medical marijuana treatment. He did not inform his employer about the medical marijuana use and in 2012 defendant updated their policies that employees in California would not be discriminated against the valid medical use of marijuana. In 2014 plaintiff suffered an injury on the job and the drug test revealed his drug use.

He was not allowed to continue further and was terminated from the job. He filed suit alleging under the Fair Employment and Housing Act (FEHA), invasion of privacy, wrongful termination in violation of public policy, breach of implied contract and the covenant of good faith and fair dealing, and defamation. The court denied Kohl's motion for summary judgment stating that a reasonable jury could determine the employee would not be discriminated.

#### Case Decision

Drozd, Justice

The FEHA claims were dismissed. "[I]t does not violate the FEHA to terminate an employee based on their use of marijuana, regardless of why they use it, and the Compassionate Use Act did not change that," said the Judge. In addition to this, the employer was not required to accommodate plaintiff's medical marijuana use and the plaintiff did not provide any evidence of disability discrimination instead offering proof only

as to how Kohl's acted in regard to how he chose to treat his condition hence the invasion of privacy failed.

The plaintiff opposed that the policies adopted by the defendant in 2012 became terms of his employment and part of an implied contract, suggesting that the employer cannot breach them. Since the plaintiff was in an at-will agreement which can be ended anytime at the discretion of either party by giving prior notice, although at-will employment has some limitations, no wrongful discharge was found, and summary judgment was granted in favor of the defendant.

## **2. Paul Curry Vs. MillerCoors Inc.**

United States District Court, D. Colorado 12-cv-02471-JLK (2013)

### Case Background

Plaintiff, Curry who was suffering from hepatitis C, osteoarthritis and pain is licensed by the State of Colorado to use medical marijuana and worked for defendant, MillerCoors Inc. Plaintiff was terminated by the defendant as he failed the drug test. Plaintiff sued under discrimination and invasion of privacy and is pursuing for an amount calculated to compensate him for lost past and future earnings as well as any other damages and attorney fees which the plaintiff estimates at least to be \$75,000.

### Case Decision

Kane, Justice

According to Colorado law, an employee may be discharged if they fail the drug test during working hours as the employer is allowed to have a written drug policy. The plaintiff violated this policy. Although the plaintiff was suffering from certain diseases and it was necessary for him to use medical marijuana, the anti-discrimination law doesn't protect an employee with a disability from an employer's standard policies.

According to MillerCoors's policy of invasion of privacy, employees were required to disclose any and all information relating to their medical conditions especially employees using medical marijuana. The plaintiff failed to state anything, therefore, judgment granted for MillerCoors's motion to dismiss without prejudice.

### **3. United States Vs. Oakland Cannabis Buyer's Cooperative.**

United States Court of Appeal for the Ninth Circuit, 00-151 (2001)

#### Case Background

The Oakland Cannabis Buyer's Cooperative was operated by a physician and registered nurses. It was provided with medical marijuana if a patient had a doctor's approval. The United States sued the Cooperative and its Executive Director since they were violating the Control Substances Act under federal law, i.e., distribution, manufacture and possession of marijuana. The district court restricted the Cooperative to continue its operations by granting a preliminary injunction, but the Cooperative continued with its business. The court found the Cooperative in contempt and rejected their motion to modify the injunction to permit medically necessary injunction.

The Cooperative appealed to this decision and the Appeals Court decided that part of the case was debatable which was the contempt order. For the modification, to the injunction, the court of appeals reversed and remanded.

#### Case Decision

Thomas, Justice

The Cooperative gave an exception that they manufactured, distributed and possessed marijuana for medical purposes, but the legal issues remain the same whether medical purposes or not. According to the statute, nothing suggests drawing the distinction

between exclusions in the manufacturing, distributing and possessing of marijuana and exclusions in the Controlled Substances Act.

The judgment by the Court of Appeals is erred in considering removal of the injunction for the manufacture, distribution and possession of marijuana for medical purposes. The judgment of the Court of Appeals is reserved and remanded for further proceedings.



## **F. Ethical Perspective**

### **1. Free Market Ethics**

This theory assumes that the most important aspect of any business is to be profitable. The responsibility of any company is to provide with a return on investment to their shareholders and deliver information about any losses that occur. According to a renowned free-market economist, Milton Friedman, companies should be careful while devoting their resources and should focus to deal with problems keeping in mind how it will affect the society.

### **2. Utilitarianism**

Jeremy Bentham introduced this approach and under this theory, an individual should think for overall good as well as about the consequences of a deed performed by them and how it will affect those related to the outcome of these consequences. An individual will compare the benefits and drawbacks of their decision and go ahead when the benefits overcome the disadvantages. This process is considered ethical under this approach.

### **3. Deontology**

According to Immanuel Kant, every person has a right to be treated equally and with respect, and the same is expected from them. The ethical approach under this theory is to stay firm with the universal principles whatever may be the consequences. Kant argues that human beings could reason their way to a set of absolute rules for right behavior.

## **Conclusion**

### Legal Concerns

In Justin Shepherd vs. Kohl's, under federal law, an employer is not required to accommodate illegal drugs, and ADA does not cover the use of medical marijuana in the workplace. In addition to this, there were no changes made by FEHA in relation to medical marijuana.

In Paul Curry Vs. MillerCoors failing a drug test and contesting that with the use of medical marijuana is unacceptable under companies' policies. Also, a disabled employee is not protected from employee misconduct under the pretense that ADA and anti-discrimination laws do not go against official employer policies.

In United States Vs. Oakland Cannabis Buyers' Cooperative, although there were no states laws violated and the cooperative was legally eligible to manufacture, possess and distribute medical marijuana but according to the Controlled Substances act under federal law, rules were violated.

### Ethical Concerns

Considering the Free Market Ethics approach by Milton Friedman, companies should think about various benefits provided to employees and whether these benefits lead to profitability. For example, relocation assistance provided to new employees is this factor contributing towards profitability or reasonable accommodation in that case. Similar factors should be considered.

Considering the Utilitarianism approach by Jeremy Bentham, it is essential to keep the work environment drug-free and disregard the use of marijuana whether it is

for recreational or medical purposes. If employees are allowed the use of marijuana, then it can affect their performance, and finally the output which would affect the company as well as its stakeholders. Also, to this, there will always be cross-over between state and federal laws until the federal laws approve the use of marijuana in the future.

Considering the Deontology approach by Immanuel Kant, everyone should be treated equally and if an employee is allowed the use of medical marijuana, then other employees can follow. Especially when the use of medical marijuana is for emotional distress, obtaining it won't be difficult as an employee interested in the recreational use may use such factors and use the marijuana for medical purposes. Keeping in mind the legal and the ethical perspective, using marijuana in the workplace can be dangerous and affect the overall productivity of any company.

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