

Compassionate Care Act

Obligations

Restrictions

Unresolved Issues



“Medical Marijuana” - A term without meaning

- Marijuana is NOT medicine
- Marijuana remains Illegal

Marijuana - Schedule I Controlled Substance

- Not FDA Approved
- No dosing guidelines
- No product consistency
- No demonstrated labeling accuracy
- Limited, if any, known efficacy in treatment of condition

State and Federal Conflict

- Federal Supremacy
- Preemption
- Dual Sovereignty - “anti-commandeering doctrine”

State and Federal Conflict

- State actors cannot violate federal law
- State cannot provide incentives to violate federal law
- Consequence of judicially determined preemption

Compassionate Care Act

- 19-24.1-32 Protections
 - A registered qualifying patient is not subject to arrest or prosecution or the **denial of any right or privilege**, including a civil penalty or disciplinary action by a court or occupational or professional regulating entity for the acquisition, use, or possession of usable marijuana or related supplies under this chapter.

Compassionate Care Act

➤ 19-24.1-33 Limitations

- This chapter does not authorize a person to engage in, and does not prevent the imposition of any civil liability or criminal liability or other penalties for engaging in the following conduct: ***

Operating, navigating, or being in actual physical control of a motor vehicle, aircraft, train, or motorboat, while under the influence of marijuana. However, a registered qualifying patient may not be considered to be under the influence of marijuana **solely** because of the presence of metabolites or components of marijuana that appear in **insufficient concentration to cause impairment**.

Compassionate Care Act

- 19-24.1-34 Acts not prohibited - Acts not required
 - This chapter does not prohibit an employer from disciplining an employee for possessing or consuming usable marijuana in the workplace or for working while under the **influence of marijuana**.

Drug Free Workplace

- 41 U.S. Code § 8101 -
Definitions and construction
 - (2) Controlled substance.— The term “controlled substance” means a controlled substance in schedules I through V of section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 ([21 U.S.C. 812](#)).

Drug Free Workplace

➤ 41 U.S. Code § 8101 -

Definitions and construction

- (5) Drug-free workplace - The term “drug-free workplace” means a site of an entity — (A) for the performance of work done in connection with a specific contract or grant described in section [8102](#) or [8103](#) of this title; and (B) at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, **possession, or use** of a controlled substance in accordance with the requirements of the Anti-Drug Abuse Act of 1988 ([Public Law 100-690](#), [102 Stat. 4181](#)).

US DOT Drug and Alcohol Testing Program

➤ 49 CFR Pt. 40

- § 40.151 What are MROs prohibited from doing as part of the verification process?
 - ❖ As an MRO, you are prohibited from doing the following as part of the verification process:
 - (e) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (e.g., under a state law that purports to authorize such recommendations, such as the “medical marijuana” laws that some states have adopted.)

ADA

- **42 U.S. Code § 12111 - Definitions**
 - The term “illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [[21 U.S.C. 801](#) et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, **or other uses authorized** by the Controlled Substances Act or other provisions of Federal law.

Human Rights Act

- 14-02.4-03. Employer's discriminatory practices
 - An employer is not required to provide an accommodation that would disrupt or interfere with the employer's normal business operations; threaten an individual's health or safety; contradict business necessity of the employer***

Human Rights Act

- 14-02.4-03. Employer's discriminatory practices
 - It is a discriminatory practice***
 - ❖ participation in **lawful activity** off the employer's premises during nonworking hours which is not in **direct conflict** with the essential business-related interests of the employer.

Human Rights Act

- 14-02.4-08. Qualification based on religion, sex, national origin, physical or mental disability, or marital status.
 - Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice [to treat adversely] ***
 - ❖ On the basis of that individual's participation in lawful activity.
 - ❖ If that participation is contrary to a bona fide occupational qualification that reasonably and rationally relates to employment activities and the responsibilities of a particular employee or group of employees, rather than to all employees of that employer.

FMLA

- **29 U.S. Code § 2611 - Definitions**
 - (11) Serious Health Condition
 - ❖ The term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves— (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) **continuing treatment** by a health care provider.

Open Issues

- Federal Preemption of ND Law
- The meaning of “under the influence”
- How to quantify, identify or determine impairment



Recommendations

