



**Julie Athey, J.D.**  
**Director of Compliance**

*Julie assists with a variety of compliance issues related to employee benefits and the ACA, ERISA and other federal and state regulations.*

## Employee Benefits – Question of the Month

May 2019

**Q:** We have locations in Missouri and Kansas. How might our drug use and testing policies need to change in response to Missouri's legalization of medical marijuana?

**A:** As you already know, in November of 2018, Missouri joined the more than 30 other states that have legalized the use of marijuana for one purpose or another. It doesn't look like Kansas will legalize any type of marijuana use in the near future.

Because marijuana is still illegal under federal law (it's in the same category as heroin and LSD), it appears most employers would be justified in continuing to prohibit it the same as any other illegal drug. That's a very general answer to a very complicated problem. The truth is there's no one-size-fits-all answer for employers struggling with this issue. With that said, here are some factors to consider:

1. **Whether you are a federal contractor or federal grant recipient.** If you are, then you are likely subject to the Drug-Free Workplace Act. Among other things, this federal law mandates covered entities to adopt zero-tolerance policies for employee use of illegal drugs. State laws that legalize marijuana have no impact on these requirements.
2. **Whether the applicable law legalizing marijuana addressed the rights or obligations of employers** with regard to employees who use marijuana (medical or otherwise). The Missouri law does not.
3. **Your organization's overall attitude toward drugs.** Some employers are more tolerant than others, and they may want to develop policies that are a bit more lenient. For example, you might want to allow marijuana for employees with a prescription.
4. **How safety-sensitive your workplace is.** If you have employees performing particularly dangerous work, you will probably want to take a more conservative approach.

These are just a few of the considerations you should take into account. We recommend that you consult your employment attorney to develop a drug use and testing policy that meets your needs and satisfies all applicable laws. This is especially important if you have employees in multiple states.

One final note, even in states that allow medical marijuana, it is not covered by insurance.

Feel free to contact me if you have any additional questions at [juliea@millercares.com](mailto:juliea@millercares.com).

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