



## **New Arizona Law Provides Guidance and Protection For Employers Against Medical Marijuana Discrimination Claims**

Last year Arizona passed Proposition 203, the Medical Marijuana Act (MMA), which legalized the use of medical marijuana under State Law. In addition, among other things, it prohibited the majority of the employers from discriminating against applicants or employees who had cards for medical marijuana either because of their cardholder status or because they tested positive for marijuana. Employers that would lose a monetary or licensing benefit under federal law as a result of compliance with the MMA were exempt from the anti-discrimination requirements.

The Arizona House Bill 2541 provides guidance and some protection for employers on Arizona's MMA.

### **Who does this law affect?**

This legislation impacts all organizations conducting drug testing in Arizona on job applicants and employees.

### **When does this law go into effect?**

May 2, 2011

### **Are there additional internal policies our organization must create to be compliant with this regulation?**

Yes, to receive the protection provided under HB 2541, employers must have a drug testing policy and drug testing program which are consistent with Arizona law.

We recommend consulting your legal counsel to: review your policy, to designate safety-sensitive positions, to define a process for demonstrating "good faith belief" decisions, and further understanding Arizona law.

### **What do employers need to know about HB 2541?**

1. Employers may not take adverse action against applicants / employees solely based on their cardholder status or a positive drug test for marijuana
2. Although Prop. 203 allowed for an employer to take action if an employee, or prospective employee, was impaired in the workplace, it did not define "**impairment**" or how to determine if an employee was impaired. HB 2541 defines the following for the employer:
  - a. "Impairment" includes symptoms that may decrease or lessen the employee's performance of the duties of the individual's job position, to include symptoms of the employee's speech, walking, standing, physical dexterity, agility, coordination, actions, movement, demeanor, appearance, clothing, odor, irrational or unusual behavior, negligence or carelessness in operating equipment or machinery, disregard for safety of self or others, involvement in an accident that results in serious damage, any injury to the employee or others, or other symptoms that create a reasonable suspicion of the use of drugs or alcohol.
3. HB 2541 also provides some protection for an employer when they act on "**good faith belief**" that the employee / potential employee is impaired while they are on employer's premises or during hours of employment. "Good faith belief" may be based on any of the following:
  - Observed conduct, behavior or appearance
  - Information reported by a reliable person
  - Written, electronic, or verbal statements
  - Lawful surveillance video
  - Reports and records of government agencies, law enforcement agencies, or court
  - Results of a drug or alcohol test
  - Other information believed to be reasonably reliable or accurate
4. "**Safety – Sensitive position**": HB 2541 also provides protection for the employer when excluding an employee from performing in a safety-sensitive position based on the "good faith belief" that the employee is in the current use of any drug, if the drug could cause impairment, or impact the employee's performance. "Safety–Sensitive position" means any job designated by an employer as safety-sensitive or any job that includes duties that could affect the safety or health of the employee or to others. This may include:
  - Operating a motor vehicle, other vehicle, equipment, machinery, or power tools

## LEGAL UPDATE

- Repairing, maintaining, or monitoring the performance or operation of equipment, machinery, or manufacturing processes where the malfunction or disruption could result in injury or property damage
- Performing duties on the premises of a customer, supplier, or vendor
- Preparing or handing food or medicine
- Working in any occupation as regulated pursuant to Title 32

### Contact Accurate Background

For more information regarding this legislation, please contact Accurate Background at 800.784.3911 or via email at [customer\\_service@accuratebackground.com](mailto:customer_service@accuratebackground.com).