



Concurrent Session C-25:

Workers Compensation— Emerging Issues

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Emerging Issue

The Legalization of Marijuana and Its Impact on Workers Compensation



State Activity



Medical Marijuana

29

Plus Washington, DC
have legalized medical marijuana



Recreational Marijuana

9

Plus Washington, DC
have legalized recreational marijuana

Federal Activity

- Federal level—Marijuana is an illegal Schedule I drug under the Controlled Substances Act
- August 2016—The US Drug Enforcement Administration announced it will not reclassify marijuana
- January 2018—The US Department of Justice rescinded former Administration's policy guidance regarding federal intervention in states that have legalized marijuana.
- March 2018—Passed budget includes Rohrabacher-Blumenauer (Farr) Amendment, prohibiting federal funds to prevent implementation of state medical marijuana laws

Colorado Supreme Court

Coats v. Dish Network (2015)



Employers can lawfully terminate workers for using marijuana outside of work hours even though the drug is LEGAL in the state.

New Mexico Court of Appeals

*Vialpando v. Ben's Automotive Services
and Redwood Fire & Casualty (2014)*

- An insurer **MUST reimburse** a “qualified” workers comp claimant for the **cost of medical marijuana** to treat low back pain
- **Appealed** to NM Supreme Court: Certiorari **denied**



New Mexico Court of Appeals

*Maez v. Riley Industrial (2015);
Lewis v. American General Media (2015)*



An employer is required to **reimburse** a “qualified” claimant for medical marijuana if the drug is **reasonable** and **necessary** medical care for **treatment** of a work injury.

Connecticut Workers' Compensation Commission Decision

Petrini v. Marcus Dairy, Inc. and Gallagher Bassett Service (2016)



Upheld the decision that the claimant's use of **medical marijuana** for pain management of his "debilitating condition" constitutes **reasonable and necessary** medical treatment.

Maine WC Board Decisions (2016)



Maine WC Board:

- *Noll v. Lepage Bakeries, Inc. and Cannon Cochran Management Services*
- *Bourgoin v. Twin Rivers Paper Co., LLC and Sedgwick CMS*

A self-insured employer is to reimburse costs for **“reasonable and proper”** use of medical marijuana under the state’s WC and medical marijuana law.

Other Activity

- At least five states (Connecticut, Maine, Minnesota, New Jersey, and New Mexico) have allowed reimbursement for WC under certain circumstances
- Florida and North Dakota passed legislation in 2017 prohibiting payment of WC benefits for medical marijuana
- New Mexico
 - Adopted a fee schedule to provide for reimbursement of medical marijuana to injured workers—effective January 1, 2016
 - Introduced legislation (SB 371/HB 527) in 2017 requiring employers and carriers to pay for medical marijuana for injured workers; the legislation did not pass

Questions Raised by WC Stakeholders

- Is marijuana a viable alternative to opioids for pain management? Is it a less expensive alternative to other drugs?
- When a state legalizes marijuana, what is the potential impact on neighboring states?
- Should states consider fee schedules for marijuana (like New Mexico)?
- How are appropriate dosage levels determined?
- What is the impact on Medicare Set-Aside Allocations since marijuana is still illegal under federal law?

Questions Raised by WC Stakeholders

- What is the impact on WC when an employee is injured on the job while under the influence of marijuana?
- How do employers handle issues like administering a drug-free workplace policy and establishing hiring practices when employees are legally using marijuana under state law?
- Can employees use medical marijuana to treat a workplace injury?
- How is “impairment” determined for marijuana?

THE **MARIJUANA** CONVERSATION

A five-part series exploring marijuana's
impact on the workers compensation system.

Find it on ncci.com.



Legalization of Marijuana—Summary



States are increasingly legalizing marijuana in some form for medical use.

Courts are increasingly dealing with contested cases of medical marijuana in the work environment.

Marijuana is still illegal under federal law and remains a Schedule I drug.