

Smart and Safe Arizona Act: Recreational Marijuana

Frequently Asked Questions



The Smart and Safe Arizona Act (“SSAA”) legalizes the use and possession of up to 1 ounce of marijuana by persons who are at least 21 years of age. It is important for Arizona employers to understand how this Act impacts personnel policies related to such matters as hiring, discipline, termination, and maintaining a drug-free workplace.

The following questions and answers examine a number of issues raised by passage of this Act. If you have further questions about marijuana and the workplace, please contact CopperPoint’s Contact Center at 602.631.2600 or 866.284.2694.



Q. Can employers continue to administer drug and alcohol testing and prohibit marijuana use by employees?

A. Yes, subject to the requirements and restrictions contained in Arizona’s drug testing statutes and the Arizona Medical Marijuana Act (“AMMA”). The SSAA does not restrict the right of employers to maintain a drug-and-alcohol-free workplace or have policies prohibiting the use of marijuana by employees or prospective employees. (A.R.S. § 36-2851.) In this respect, nothing in the Act should be construed as preventing an employer from testing employees or prospective employees for marijuana or adopting policies prohibiting marijuana use.

However, it is essential that employers administer their drug-and-alcohol testing programs in accordance with Arizona’s drug testing statute, A.R.S. § 23-493 et seq. This Act sets forth specific requirements for employers in terms of testing procedures, testing policy requirements, and the processes that must be followed when an employer takes an adverse action based upon a positive drug test. It remains important for employers to periodically review their drug testing policies and procedures to ensure they are in compliance with Arizona’s drug testing statute.

Additionally, an employer’s ability to take adverse employment actions based upon a positive drug test may be limited by Arizona’s medical marijuana laws. The AMMA (A.R.S. § 36-2801 et seq.) allows a qualified patient possessing a valid registry identification card to possess up to 2-and-1-half ounces (or 12 marijuana plants) for personal medical use. (A.R.S. § 36-2813.) This Act contains certain “anti-discrimination” provisions protecting cardholders from discrimination in hiring, termination, or disciplinary decisions. If you have further questions regarding the anti-discrimination provisions of the AMMA, please refer to CopperPoint’s Medical Marijuana FAQs for recommendations on developing employment policies related to drug testing and maintaining a drug-free workforce.

Q. Can an employer discipline an employee who uses, possesses, distributes, or is impaired by marijuana while at the workplace?

- A.** Yes. The SSAA does not require an employer to “permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or cultivation of marijuana in a place of employment.” (A.R.S. § 36-2851.) An employee may be subject to discipline, including termination, for any of these activities. Further, nothing in Arizona’s Medical Marijuana Act requires an employer to tolerate such behavior.

Q. How can an employer best determine if an employee is impaired by drugs or alcohol at work?

- A.** Determining whether an employee is impaired by drugs or alcohol (including marijuana) while at work can be difficult. Indications of marijuana impairment are often subtle and require careful observation to detect. Fortunately, Arizona law provides some guidance as to the signs and symptoms of impairment that an employer may look for in attempting to determine whether an employee is under the influence of drugs or alcohol. These indicia include unusual speech patterns, altered gait, impaired physical dexterity and coordination, unusual demeanor, odor of drugs or alcohol, unusual behaviors, the inability to operate equipment or machinery, and involvement in a serious accident. (A.R.S. § 23-493.)

Arizona law provides protections for employers who take adverse actions against employees, based upon an employer’s good faith belief that an employee is impaired while working on the employer’s premises or during hours of employment. (A.R.S. § 23-493.06.) Training managers to identify and document potential signs and symptoms of impairment can greatly facilitate an employer’s assessment as to whether an employee is impaired on the job.

Q. Can an employer prohibit marijuana use by employees in safety sensitive positions?

- A.** Yes. As previously indicated, the SSAA does not restrict the right of an employer to maintain a drug free workplace or to restrict the use of marijuana by employees or prospective employees. Under this Act, an employer is still free to identify certain jobs as safety sensitive positions and to prohibit employees in safety sensitive positions from using marijuana.

This is also true under the AMMA. If a position is deemed safety sensitive and the employee is a cardholder, the employer may decline to hire the prospective employee for the position or reassign an existing employee from a safety sensitive position. Arizona’s drug testing statute describes a safety sensitive position as a job involving duties that could affect the safety and health of the employee performing the task or others, such as driving a motor vehicle or maintaining and/or operating equipment/machinery. (A.R.S. § 23-943.)

Q. Now that recreational marijuana has been legalized, will there be any changes to the Arizona Alcohol-and-Drug-Free Workplace Premium Credit?

- A.** No changes are anticipated. The initiative expressly states that it “does not restrict the rights of employers to maintain a drug-and-alcohol-free workplace or affect the ability of employers to have workplace policies restricting the use of marijuana by employees or prospective employees.” Employers that establish and maintain qualifying drug-and-alcohol-free workplace programs in accordance with Title 23, Chapter 2, Article 14 of Arizona Statutes will continue to qualify for the credit.