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## "Lightin' Up At Work" - Medical Marijuana in the Workplace



In 1996 California voters passed the "Compassionate Use Act" which permitted individuals in the state to use marijuana for medicinal purposes. Since its creation there has been a substantial amount of back and forth between California and the Fed. However, at no time have California employers been required to "accommodate" marijuana use by employees at work or before work when reporting with marijuana in their system. This status has been upheld numerous times, beginning in 2008 when the California Supreme Court ruled in the case of *Ross v. Raging Wire*. An employee alleged that somehow an employer violated law when they refused to hire him because he tested positive for medicinal marijuana. California law only protects individuals against criminal prosecution in the state (and not even under federal law); but does not require employers to allow the use of drugs at work! This decision has recently been reinforced and upheld in the federal court system in the case of *James v. City of Costa Mesa*, where the 9th Circuit Court of Appeals (the circuit governing California and other western states) held that the Americans with Disabilities Act does not protect medical marijuana users from discrimination based on their use of pot in a work environment.

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California employers should make sure that they have a prohibition against the use of any drugs or alcohol at work, or having such substances in the system when reporting to work. This is both a safety precaution, as well as to ensure production is not harmed. The prohibition should also cover prescription medications in non-prescribed dosages. Employers should also review policy to make sure they are not using the term "under the influence" as it pertains to marijuana or other drugs, as there is no legal standard which defines "under the influence" (there is with alcohol at 0.08).

Employers having questions about this, drug testing in California or any other employment related questions should contact me at [The Employers' Council™](#) by clicking [here](#) or call me at the number listed.

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