THE IMPACT OF MARIJUANA LEGALIZATION ON OUR SCHOOLS

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She provides legal advice to administrators on personnel matters such as discipline, layoffs, discrimination complaints, disability accommodations, and leaves, in addition to preparing responses to DFEH and EEOC complaints and negotiating settlement agreements. She also has substantial experience with student issues including records, discipline, searches and constitutional issues.
PROPOSITION 64

RECREATIONAL MARIJUANA
PROPOSITION 64 - ALLOWS

- Recreational use, possession and cultivation by an individual 21 and over
- Cultivation in a residence, up to 6 plants
- Sale, distribution, dispensaries and deliveries as regulated by the local jurisdiction
- Business regulation and taxes
- Changes penalties for possession, use and cultivation
- Requires jurisdictions to allow transportation of marijuana
PROPOSITION 64 – DOESN’T ALLOW

- Cultivation, possession or use by anyone under the age of 21
- Public smoking or ingesting of marijuana
- Smoking or ingesting marijuana while driving, driving “under the influence,” or possessing an “open container”
- The location of any marijuana business within 600 feet of a school, daycare or youth center
- Smoking or ingesting marijuana in, on or near a school, daycare or youth center
- Smoking marijuana in a tobacco-free zone
- Marijuana advertising directed at minors
PROPOSITION 64 – DOESN’T CHANGE

- Employer’s ability to regulate workplace policies related to drugs/alcohol
- School’s ability to regulate and maintain a drug-free school zone
- The existence and use of medical marijuana
- The obligations of mandated reporters
- U.S. Department of Transportation regulations for bus drivers as safety-sensitive positions.
PROP 64 prohibits possessing, smoking or ingesting marijuana *in or on the grounds* of a school, day care center or youth center where children are present.

**But**

Doesn’t substantially change:

- Juvenile Drug Trafficking and Schoolyard Act
- Tobacco-Free School Districts
- Compassionate Use Act of 1996
TODAY’S PERFORMANCE

“HIGH TIMES AT SMOKY BUTTE HIGH”

Cast: Mr. Goodheart, Principal
Mary Jane Bloom, Teacher
Joey Budd, Student in Senior Class
Pete Potter, Janitor
Heather Homegrown, Joey Budd’s Stepmother
Our teacher, Mary Jane, finds that her entire day flows more smoothly if she can take a couple of “tokes” on her lunchbreak. Mary Jane has heard that it’s now legal to smoke marijuana. As a result of this new-found freedom, Mary Jane decides to go to her car, which is located in the school parking lot, where she pulls out a joint and lights up.
ISSUES

• Are students “present”?
• OK to possess, smoke or ingest on school grounds when children aren’t present?
• Can we declare schools off-limits at all times because children could be present?
• What about other District property where children aren’t allowed, like school bus yards?
• Is the parking lot school property?
PROP 64 prohibits possession of any amount of marijuana in or on school grounds when children are present.
Across town, District janitor Pete Potter cleans up the school-bus yard, located miles away from a school and where no children are allowed, for safety reasons. He enjoys vaping marijuana during his afternoon break.
ISSUES

• Is it “school property”?  
• Can it be protected under a “Drug-Free Workplace Policy”?  
• What about a “Tobacco-Free School Policy”?  

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OTHER CONCERNS

Be sure to check your local ordinances regarding possession and use around your schools.
PROP 64 does not affect an employer’s ability to maintain a drug- and alcohol-free workplace.
Janitor Pete finished a challenging work week and decides to smoke some pot at a party off-campus over the weekend. Monday morning, Pete shakes hands with Principal Goodheart, who notices Pete is unusually relaxed.

Pete slips and falls in the water in the boys bathroom while trying to fix a broken pipe. The District has a policy and practice of drug and alcohol testing employees post-accident.
1. Where do we start?

2. Is sending Janitor Pete for a drug test good enough to show he was impaired at work?
SCENE FOUR

Mary Jane was at the same party as Pete, where people were smoking and ingesting marijuana. Principal Goodheart has heard about this party and believes Mary Jane was probably there, although this fact has not been confirmed. Monday morning, Mary Jane calls in and says she’s going to be late. When she shows up, she appears unusually disheveled, is shuffling her feet and slurring her words. Her eyes are half-closed and she won’t look Principal Goodheart in the eye.
ISSUES

1. Where should Principal Goodheart start?

2. Can Principal Goodheart send Mary Jane for a drug test?

3. Can Principal Goodheart discipline Mary Jane?
GENERAL RULE

You are always better off disciplining based on conduct in the workplace.

Don’t overlook the objective evidence of conduct v. results of drug-testing.
Mary Jane had a busy weekend. In addition to hearing about the party, Heather Homegrown, Joey Budd’s Stepmom, approached Principal Goodheart first thing Monday and told him that Joey saw his teacher, Mary Jane, smoking a joint and passing it among her friends at a rock concert.
• Can you discipline her for her off-duty drug use if it doesn’t affect her ability to perform the job?
SCENE SIX

Principal Goodheart is finally fed-up with Mary Jane’s pot smoking. He brings her into his office to discuss it, and she informs him that she has a doctor’s recommendation for medical marijuana and wants a reasonable accommodation.
PROP 64 specifically does not require a public nor a private employer to “accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace....”
UNION ISSUES

- Negotiation of Policy
- Proof of “Under the Influence”
- Changes to Drug Testing
- Discipline Issues
Handling Employee Suspected of Being Under the Influence

1. Interview the employee
2. Determine whether there are signs the employee is under the influence
3. Ask why he or she is impaired
4. If the employee is impaired, do not allow the employee to drive home
5. Focus on the impact on the employee’s ability to perform job duties
PROP 64 has no impact on laws prohibiting those under the age of 21 from smoking or possessing marijuana.
SCENE SEVEN

Joey Budd comes into the school office smelling like a cloud of weed. Joey denies that he’s been smoking pot or that he has any on his person. Principal Goodheart proposes to suspend him and calls Joey’s stepmom, Heather Homegrown, to come to school to discuss it.
• Can you discipline Joey?
• Districts may see increased incidents of marijuana possession and use on campuses, so it’s important to stay on top of trends.

• Districts should review policies to ensure all District property is declared and protected Drug- and Alcohol-Free Zones.

• Should also review and update discipline policies and regulations for personnel and students.

• Should consider “reasonable suspicion” training for administrative personnel.
QUESTIONS
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