Let's address the "buzz" about medical marijuana!

A timely article from ScreenSafe, Inc.

We are not attorneys and have never played one on television. Our comments here are based solely on our experience as a third party administrator. If you have specific questions regarding this matter you are encouraged to seek legal counsel.

A recent Mid-America Regional Bargaining Association (MARBA) newsletter referenced a medical marijuana case in Massachusetts. In Barbuto v. Advantage Sales and Marketing LLC, a medical marijuana user is suing the employer for terminating her after working one day because she failed the pre-employment drug screen. The Massachusetts Supreme Judicial Court ruled that terminating an employee for medical marijuana use may be handicap discrimination.

There are several important factors to remember. First, this case was based on Massachusetts state law which is vastly different from Illinois statute 410 ILCS 130/50. Second, this ruling allows the suit to continue, it is not a ruling on the case itself. Third, this case is about handicap discrimination not discrimination against medical marijuana users. In this particular situation, the company did not attempt to discuss other possible handicap accommodations to resolve the issue, as required by Massachusetts state law.

The Illinois statute is clear that an employer has the right to test and either not hire or fire an employee as long as there is a policy in place and it is administered in a non-discriminatory manner. Below is the Illinois statute that addresses employment and employer liability, specifically (b)-(e). Plumbing Contractors Association Midwest contractors have a drug-free workplace program that is administered by a third party and the policy addresses marijuana on page 8, #2(c). The existing program has a solid foundation.

An employer cannot discriminate against a person solely because that person is a registered “compassionate use of medical cannabis” card holder, and an employer should not test an employee purely because they found out that the employee has a “compassionate use” card. Employers whose policy requires that all prospective employees submit to a “pre-employment” or a “pre-hire” drug screen should continue the process. For new employees, who are not governed by a negotiated agreement, employees should never be put to work prior to the receipt of all pre-employment screening information. If a contractor does not perform pre-employment drug screens they should not send a person because they’ve learned that the prospective employee has a "compassionate use" card. If you would like to start testing for pre-employment, it should be added to your company policy. Regardless of how an employer handles pre-employment drug screening, they need to be firm, fair, and consistent throughout.

ScreenSafe, Inc. is the administrator of our "Drug Free Alliance" program associated with Local 130's CBA. Our PCA/Plumbing Council Midwest affiliated contractors can address any questions by phone at 877-727-3369 or e-mail Screensafe, Inc. V.P. Luci Manos at: luci@screensafeinc.com.

(410 ILCS 130/50)
    (Section scheduled to be repealed on July 1, 2020)
    Sec. 50. Employment; employer liability.
    (a) Nothing in this Act shall prohibit an employer from adopting reasonable regulations concerning the consumption, storage, or timekeeping requirements for qualifying patients related to the use of medical cannabis.
    (b) Nothing in this Act shall prohibit an employer from enforcing a policy concerning drug testing, zero-tolerance, or a drug free workplace provided the policy is applied in a nondiscriminatory manner.
    (c) Nothing in this Act shall limit an employer from disciplining a registered qualifying patient for violating a workplace drug policy.
    (d) Nothing in this Act shall limit an employer's ability to discipline an employee for failing a drug test if failing to do so would put the employer in violation of federal law or cause it to lose a federal contract or funding.
    (e) Nothing in this Act shall be construed to create a defense for a third party who fails a drug test.
    (f) An employer may consider a registered qualifying patient to be impaired when he or she manifests specific, articulable symptoms while working that decrease or lessen his or her performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, negligence or carelessness in operating equipment or machinery, disregard for the safety of the employee or others, or involvement in an accident that results in serious damage to equipment or property, disruption of a production or manufacturing process, or carelessness that results in any injury to the employee or others. If an employer elects to discipline a qualifying patient under this subsection, it must afford the employee a reasonable opportunity to contest the basis of the determination.
    (g) Nothing in this Act shall be construed to create or imply a cause of action for any person against an employer for: (1) actions based on the employer's good faith belief that a registered qualifying patient used or possessed cannabis while on the employer's premises or during the hours of employment; (2) actions based on the employer's good faith belief that a registered qualifying patient was impaired while working on the employer's premises during the hours of employment; (3) injury or loss to a third party if the employer neither knew nor had reason to know that the employee was impaired.
    (h) Nothing in this Act shall be construed to interfere with any federal restrictions on employment including but not limited to the United States Department of Transportation regulation 49 CFR 40.151(e).
(Source: P.A. 98-122, eff. 1-1-14.)