

LAW OFFICES OF
HOLMES WEDDLE & BARCOTT
A PROFESSIONAL CORPORATION

WELLS FARGO CENTER · 999 THIRD AVENUE, SUITE 2600 · SEATTLE, WASHINGTON 98104-4011
TELEPHONE (206) 292-8008 · FAX (206) 340-0289

**DAZED AND CONFUSED?
DON'T BE**

**Drug-Free Workplace, Zero-Tolerance Policies, Drug-Testing Programs, DOT Regulations
ARE NOT Affected by Passage of Washington Initiative 502**

Even though Washington citizens recently voted to legalize the use and possession of marijuana, marijuana use and possession still can cost an employee his or her job. Marijuana is illegal under federal law. Under the Controlled Substances Act (CSA), 21 U.S.C. §§ 801-904, marijuana is classified as a Schedule 1 drug and the use of marijuana for medical or recreational purposes is prohibited. Federal law trumps state law. *Gonzales v. Raich*, 541 U.S. 1 (2005) (federal government has the power to criminalize marijuana-related conduct even when marijuana was grown and used entirely in a single state). As long as federal law prohibits the use of marijuana, a state cannot legalize it and require employers to accommodate such use. I-502 does not create any sort of job protections to marijuana users and employers in Washington State cannot be required to accommodate recreational use and possession of marijuana.

The Washington State Medical Use of Marijuana Act (MUMA), RCW 69.51A, permits health care professionals to authorize marijuana use in limited circumstances, and provides an affirmative defense to a state criminal charge. The law does not legalize marijuana and does not confer any employment protections to medical marijuana users. MUMA relieved an employer from any requirement to accommodate on-site or other medical marijuana use and provided for the establishment of drug-free workplaces. RCW 69.51A.060.

The Washington State Supreme Court considered whether MUMA conferred employment protection on users of medical marijuana and held that it DID NOT. *Roe v. TeleTech*, 171 Wn.2d 736 (2011). *Roe* established clearly that an employee using medical marijuana pursuant to MUMA can be discharged for use of marijuana in contravention of an employer's policies. There is no cause of action for wrongful discharge or employment discrimination under MUMA.

I-502 will not affect current Washington employers' Zero-Tolerance Policies and Drug-Free Workplaces, nor will it affect current drug-testing programs in workplaces. DOT-regulated employers must continue to comply with DOT regulations on drug and alcohol testing for safety-sensitive transportation employees.

What Should Employers Do?

Employers should review their policies addressing use and possession of illegal drugs, and amend such policies to specifically state that marijuana use and possession is not tolerated and that the "illegal" in the prohibition of illegal drugs refers to federal law.

Many employees may be dazed and confused at what impact, if any, Washington's new pot law will have in the workplace. Employers should communicate directly in writing to current employees and applicants what affect, if any, the new law will have on the existing policies. Employers should reiterate their commitment to a drug and alcohol-free workplace and that they will continue to test employees consistent with the employer's written policies.