

Recreational Marijuana

Nothing in this Act shall prohibit an employer from adopting reasonable zero tolerance or drug free workplace policies.

410 ILCS 705/10-50(a)

Recreational Marijuana

Nothing in this Act shall require an employer to permit an employee to be under the influence of or use cannabis in the employer's workplace or while performing the employee's job duties or while on call.

410 ILCS 705/10-50(b)

Recreational Marijuana

Nothing in this Act shall limit or prevent an employer from disciplining an employee or terminating employment of an employee for violating an employer's employment policies or workplace drug policy.

410 ILCS 705/10-50(c)

However. . .

Under the **Right to Privacy in the Workplace Act** an employer cannot:

- * refuse to hire, discharge or otherwise disadvantage any individual because the individual uses **lawful** products off-premise during nonworking and non-call hours.
- * “Lawful products” means products that are legal under state law.

820 ILCS 55/5(a)

Medical vs. Recreational Exemptions

- **Recreational**: “the use of cannabis by a law enforcement officer, corrections officer, probation officers or firefighters while on duty” or by a person who has a CDL while on duty”
- **Medical**: “**active duty**” law enforcement officers, correctional officers, correctional probation officers, or firefighters or anyone who **holds** a school bus permit or commercial driver’s license.

However. . .

- According to the Illinois Association of School Boards:
 - Employees holding Commercial Drivers Licenses (CDLs) in transportation must abide by federal laws that prohibit the usage of cannabis. As such, **a positive drug test for an employee who drives a school bus would be grounds for action against the employee.**

What is “impairment” under the CRTA?

A **good faith belief** that that an employee manifests “**specific, articulable symptoms** while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position.”

What is “impairment” under the CRTA?

“Specific, articulable symptoms”:

- Employee’s speech
- Physical dexterity, agility, coordination
- Demeanor
- Irrational or unusual behavior
- Carelessness in operating equipment or machinery
- Involvement in **any accident** that results in **serious** damage to equipment or property
- Carelessness that results in **any injury** to the employee or others

Employee's Right to Contest Determination of Impairment

If an employee is disciplined on the basis that the employee is under the influence or impaired by cannabis, the employer must afford the employee a **reasonable opportunity to contest the basis of the determination.** 410 ILCS 705/10-50(d)

Board Policy Example

5:50 Drug-and Alcohol-Free Workplace (excerpt)

All District workplaces are drug- and alcohol-free workplaces. All employees are prohibited from engaging in any of the following activities while on District premises or while performing work or being on call for the District:

1. Unlawful manufacture, dispensing, distribution, possession, or use of an illegal or controlled substance, or being impaired by or under the influence of any illegal substance or any detectible use of any illegal substance regardless of when or where the use occurred.
2. Distribution, consumption, use, possession, or being impaired by or under the influence of an alcoholic beverage; being present on District premises or while performing work for the District when alcohol consumption is detectible, regardless of when and/or where the use occurred.
3. Distribution, consumption, possession, or use, or being impaired by or under the influence of medical cannabis; being present on District premises or while performing work for the District when impaired by or under the influence of cannabis, regardless of when and/or where the use occurred, unless distribution, possession, and/or use is by a school nurse or school administrator pursuant to Ashley's Law, 105 ILCS 5/22-33. **The District considers employees impaired by or under the influence of cannabis when there is a good faith belief that an employee manifests the specific articulable symptoms listed in the Cannabis Regulation and Tax Act (CRTA).**

Things to Consider...

- In any situation where a member is accused of being impaired by cannabis at work, there must be a “good faith belief” substantiated by “articulable symptoms” as defined in the law.
 - Require the employer to put the symptoms in writing.
 - Ensure that a union rep is involved. The employee has the right to representation (Weingarten), but ask management to agree that in cases involving suspicion of impairment, the union will always be involved.
 - The union rep may collect anecdotal evidence such as photos and video and also keep a written report of his/her observations.
 - Insist that supervisors be trained to identify symptoms of cannabis impairment.
 - The accused employee must have a reasonable opportunity to contest any evidence.
- No test currently exists to identify cannabis impairment. Avoid bargaining details regarding testing/THC levels (emphasize “articulable symptoms”).

Workers' Compensation

- If there is evidence at the time of the accident of intoxication due to the “unlawful or unauthorized” use of marijuana, there is a rebuttable presumption the employee was intoxicated, and the intoxication was the proximate cause of the accident.
- This could lead to a denial of Workers' Compensation benefits and the employee's health insurance may deny coverage if the injury occurred in the workplace.

Federal Law

Controlled Substances Act

- Marijuana is still classified as a Schedule 1 substance under the Controlled Substances Act (along with heroin, LSD, opioids, etc.)
- The DEA defines Schedule 1 drugs as having no current acceptable medical use and that there is no scientifically recognized medical benefit from smoking or eating marijuana plants.
- Use, possession, and sale of marijuana – medical or recreational – is still considered a federal crime.