HR Brief

Human Resources tips brought to you by
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DID YOU KNOW?

The extent of workplace accommodation rights for pregnant employees is under review in the U.S. Supreme Court case of Young v. United Parcel Service.

This case addresses the issue of when the Pregnancy Discrimination Act (PDA) requires an employer to provide similar work accommodations to a pregnant employee with limitations as it does to employees with similar, non-pregnancy-related limitations.

The court's decision, expected in June, will likely have a widespread impact on required pregnancy accommodations in the workplace.

Marijuana in the Workplace

In November 2014, Alaska, Oregon and the District of Columbia joined Colorado and Washington state in legalizing the use of recreational marijuana. Twenty-one other states have also legalized the use of medical marijuana.

The changing legal and social acceptance of marijuana use can create uncertainty for companies when creating and enforcing workplace drug policies. Understanding the legal status of marijuana use, as well as being aware of pending court cases regarding marijuana in the workplace, can reduce the uncertainty.

The use of marijuana, which is classified as a Schedule I substance under the Controlled Substances Act, is prohibited by federal law. However, many states have legalized medical and/or recreational marijuana.

In general, workplace drug policies can still maintain a zero-tolerance stance for marijuana use and impairment in the workplace. However, you should consult legal counsel before terminating an employee based on marijuana use, especially if medical marijuana is legal in your state and/or the employee tested positive for the drug but did not show signs of impairment.

Depending on the laws in your state, you may have to consider the following:

- Antidiscrimination laws – If your state allows medical marijuana, you may also have to navigate medical marijuana antidiscrimination regulations.
- What constitutes impairment – If an employee tests positive for delta-9-tetrahydrocannabinol (THC), the primary active chemical in marijuana, but is not actually impaired in the workplace, you may or may not have justification for termination, depending on your state's laws.

Thus far, courts have generally upheld employers' rights to zero-tolerance drug policies. However, pending cases and new laws could change that, so proceed with caution when determining your policy for dealing with positive drug tests and marijuana use, especially when dealing with medical marijuana use in states that have legalized medical marijuana.

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When FMLA Is Exhausted

Under the Family and Medical Leave Act (FMLA), covered employees are entitled to 12 weeks of unpaid, job-protected leave for specified family and medical reasons. After FMLA is exhausted, or if the employee is not eligible for FMLA, you may face uncertainty about whether you must continue to offer leave or if you may terminate the employee.

There are several considerations you should make when FMLA is exhausted but an employee is not ready to return to work. You should consider if any of the following apply to the situation:

- Your own leave policies
- The Americans with Disabilities Act (ADA)
- The Pregnancy Discrimination Act (PDA)
- State leave and workers' compensation laws

Especially if the employee condition is covered by the ADA or PDA, you should enter an interactive process with the employee to determine if reasonable, temporary accommodations can be made. When FMLA leave is exhausted, don't assume that you can automatically terminate the employee.