

RESOLUTION 12-02-2017 (REVISED AS AMENDED)

DIGEST

Employment: Employees' Right to Use and Possess Marijuana at Work

Amends Health and Safety Code section 11362.45 to create employees' rights to use and consume marijuana in the workplace.

RESOLUTIONS COMMITTEE COMMENTS

History:

No similar resolutions found.

Reasons:

This resolution amends Health and Safety Code section 11362.45 to create employees' rights to use and consume marijuana in the workplace.

Health and Safety Code section 11362.1 permits persons 21 years of age or older to possess not more than 28.5 grams of marijuana, not in the form of concentrated cannabis, and to consume, process, transport, purchase, obtain, or give away marijuana products. Health and Safety Code section 11362.45 lists activities that are exempt from the liberties of Health and Safety Code section 11362.1. When read together, Health and Safety Code section 11362.1, subdivision (f) presently allows public and private employers to decide whether they will permit the presence and the consumption of marijuana in the workplace, to include its sale, transfer, display and transportation. Health and Safety Code section 11362.1, subdivision (f) also states that nothing in this section will affect an employer's rights ". . . to have policies prohibiting the use of marijuana by employees and prospective employees, or to prevent employers from complying with state or federal law."

The use of CBD is no different than Tylenol, because CBD is non-psychoactive; with the amendment, this resolution provides the proper balance – on the one hand ensures that employers can ensure a safe workplace for employees, ensure that there is no undue hardship for employees, and ensure that employers comply with Federal law, and on the other hand, ensures that employees' have a valid need for medical marijuana; patient who is in recovery facing termination because of his/her necessary use of medical marijuana faces additional stress, which in turn interferes with the patient's recovery.

The Resolutions Committee initially recommended disapproval of this resolution. The full Conference voted to approve the resolution as amended.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Health and Safety Code section 11362.45 to read as follows:

1 § 11362.45

2 Section 11362.1 does not amend, repeal, affect, restrict, or preempt:

3 (a) Laws making it unlawful to drive or operate a vehicle, boat, vessel, or aircraft, while
4 smoking, ingesting, or impaired by, marijuana or marijuana products, including, but not limited
5 to, subdivision (e) of Section 23152 of the Vehicle Code, or the penalties prescribed for violating
6 those laws.

7 (b) Laws prohibiting the sale, administering, furnishing, or giving away of marijuana,
8 marijuana products, or marijuana accessories, or the offering to sell, administer, furnish, or give
9 away marijuana, marijuana products, or marijuana accessories to a person younger than 21 years
10 of age.

11 (c) Laws prohibiting a person younger than 21 years of age from engaging in any of the
12 actions or conduct otherwise permitted under Section 11362.1.

13 (d) Laws pertaining to smoking or ingesting marijuana or marijuana products on the
14 grounds of, or within, any facility or institution under the jurisdiction of the Department of
15 Corrections and Rehabilitation or the Division of Juvenile Justice, or on the grounds of, or
16 within, any other facility or institution referenced in Section 4573 of the Penal Code.

17 (e) Laws providing that it would constitute negligence or professional malpractice to
18 undertake any task while impaired from smoking or ingesting marijuana or marijuana products.

19 (f) The rights and obligations of public and private employers to maintain a drug and
20 alcohol free workplace or require an employer to permit or accommodate the ~~use, consumption,~~
21 ~~possession, transfer, display, transportation,~~ sale, or growth of marijuana in the workplace, ~~or~~
22 ~~affect the ability of employers to have policies prohibiting the use of marijuana by employees~~
23 ~~and prospective employees,~~ or prevent employers from complying with state or federal law,
24 except as provided in subdivision (j).

25 (g) The ability of a state or local government agency to prohibit or restrict any of the
26 actions or conduct otherwise permitted under Section 11362.1 within a building owned, leased,
27 or occupied by the state or local government agency.

28 (h) The ability of an individual or private entity to prohibit or restrict any of the actions or
29 conduct otherwise permitted under Section 11362.1 on the individual's or entity's privately
30 owned property.

31 (i) Laws pertaining to the Compassionate Use Act of 1996.

32 (j) The employer must attempt to make reasonable accommodations for the medical
33 needs of an employee who engages in the medical use of cannabis if the employee holds a valid
34 identification card under Health and Safety Code section 11362.71, provided that such
35 reasonable accommodation would not:

36 (i) pose a threat of harm or danger to persons or property, or impose an undue hardship
37 on the employer;

38 (ii) impair the employee's ability to perform his or her essential job duties; or

39 (iii) violate an employer's obligations under federal law or regulations.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS:

The Problem: This law treats cannabis use in the same manner as the use of drugs that are illegal under California law and alcohol use. The law does not consider cannabis use for medicinal

purposes or the fact that testing for cannabis use does not evidence current impairment in the same manner as does testing for alcohol use.

People who use cannabis for medicinal purposes may be subject to employer policies that prevent them from medicating while at work. This unequal treatment causes stress to such employees and creates a stigma around those who choose to treat their conditions using medical cannabis and those that do not. Employees who have been prescribed medical cannabis to treat a medical condition should be afforded the same rights and subject to the same obligations as any other employee who has been prescribed medication. Furthermore, testing for marijuana does not provide information as to intoxication in the same manner that testing for alcohol does. As such, the information gained from testing for cannabis in the context of employment provides little information relevant to an employee's fitness to perform his or her duties as an employee and only services to treat individuals who recreationally use cannabis in line with California law, may be treated differently than their colleagues.

The Solution: This resolution would allow for equal treatment for all individuals regardless of their use of cannabis commensurate with California law.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION:

AB 64 (Cooley, Jones-Sawyer, Lackey, and Wood) 2016 - Cannabis: medical and nonmedical: regulation and advertising – Filed with Secretary of State on December 12, 2016.

AB 266 (Bonta) - 2015- Medical Marijuana - Filed by Secretary of State on October 9, 2015

AB 243 (Wood) - 2015 - Medical Marijuana - Filed with Secretary of State on October 09, 2015.

SB 243 (McGuire) - 2016 Medical Marijuana - Filed with Secretary of State on October 09, 2015

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