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cannabis
convictions

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Cannabis Legalization in Illinois & Disability Rights

Many people with disabilities use cannabis to treat the symptoms of their disability. Before doing so, it is important to understand what the law does – and does not do – to protect the rights of people with disabilities to be free from discrimination.

FEDERAL LAW: AMERICANS WITH DISABILITIES ACT (ADA)

The ADA is a federal anti-discrimination law that protects the rights of people with disabilities.

General Rule. The ADA does not apply to people who are currently engaging in the illegal use of drugs when action is taken because of that use.

Result. Because the ADA is a federal law and cannabis is considered an “illegal drug” under the federal Controlled Substances Act, courts uniformly find that people who currently use cannabis are not covered by the ADA.

Exception. The ADA does apply to people who are no longer engaging in the use of illegal drugs and (1) participated in a supervised drug rehabilitation program; (2) successfully completed a supervised drug rehabilitation program; or (3) otherwise been “rehabilitated successfully.”

Drug Tests & Inquiries. The ADA does not prohibit employers from requiring applicants or employees to undergo a test for the current use of illegal drugs. The ADA does not prohibit employers from asking questions about past drug use or treatment/counseling that would show a history of drug use.

STATE LAW: ILLINOIS HUMAN RIGHTS ACT (IHRA)

The IHRA is a state anti-discrimination law that protects the rights of people with disabilities.

Possible Protections. The IHRA *may* protect a person with a disability who uses cannabis if they (1) experience disparate treatment as a result of their cannabis use; or (2) are denied a reasonable accommodation to an employer’s drug-free workplace policy. Reasonable depends on many factors, including the type of job and employer at issue. We are still waiting to see how courts apply the IHRA to people who use cannabis.

Other States. Some courts have recognized private causes of action under their state anti-discrimination laws and have found that the ADA does *not* preempt (or override) state law.

STATE LAW: COMPASSIONATE USE OF MEDICAL CANNABIS PROGRAM ACT

The Compassionate Use Act is a state law that creates a system where people with certain disabilities can get an ID card that allows them to legally purchase and use cannabis.

Possible Protections. The Compassionate Use Act has an anti-discrimination provision. While the law prohibits an employer from penalizing an employee for having a medical cannabis card, it allows employers to enforce drug-testing, zero-tolerance, or drug-free workplace policies, discipline employees for violating those policies, or discipline employees for failing a drug test. We are still waiting to see how courts interpret this law.

Other States. Some courts have recognized private causes of action under their state medical cannabis laws and have found that the ADA does *not* preempt (or override) state law.

Information provided by New Leaf Illinois grantee Equip for Equality
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