

MEDICAL MARIJUANA IN U.S. AND WORK COMP

-A QUICK LOOK-

LMAC – June 2019



Montana Department of
LABOR & INDUSTRY

History in Montana

- **2004 – November I-148 approved by Montana voters**
 - Growth moderate
- **2011 – SB 423**
 - Repealed laws from initiative and replaced with more restrictive laws
 - Reasonable access no more than 3 patients
- **2016 – Montana Supreme Court**
 - *Mont. Cannabis Indus. Ass’n. v. State*, 2012 MT 201 [reversing a District Court injunction against part of the 2011 legislation] and *Mont. Cannabis Indus. Ass’n. v. State*, 2016 MT 44 [affirming in part and reversing in part a District Court injunction against portions of the 2011 legislation], decided Feb. 25, 2016. A good procedural history of both cases can be found at 2016 MT 44 at paras. 3-10.
 - Ruled in favor of restrictive law which greatly reduced access
- **2016 – I-182**
 - Removed the 3 patient restriction
 - PTSD qualifies
 - Businesses must be licensed and inspected
 - No longer unannounced inspections from law enforcement
- **2017 – SB 333**
 - Regulation on seed to sale tracking; licensing of dispensaries; allowable amounts; tax on providers; fee for dispensaries

In Work Comp in Montana

- **39-71-407, MCA**
 - Worker is not eligible for benefits if the use marijuana for a debilitating medical condition is the cause of the injury or OD
 - Insurer not required to reimburse for costs associated with the use of marijuana for a debilitating condition
 - In an accepted claim, benefits payable may not be increased or enhanced due to a worker's use of marijuana for a debilitating medical condition
 - Marijuana not considered a prescribed drug
- **24.29.1526, ARM**
 - Disallowed procedures includes medical marijuana

Is Medical Marijuana Reimbursable in WC

- **Allow Reimbursement**

- New Mexico
 - Also has a fee schedule
- Connecticut
- Minnesota
- New York

- **Does Not Allow**

- Florida
- North Dakota
- Louisiana (2018)
does not prohibit but
does not require
- Montana
 - Statute
 - Rule

Legislation in 2019

- Considered legislation to authorize reimbursement for medical marijuana
 - Hawaii
 - Kansas
 - Main
 - Maryland
 - New Jersey
 - New York
 - Vermont
- Proposed legislation to not prohibit but not require
 - Hawaii
 - Kentucky
 - Oklahoma

Recent Court Cases

- In March 2019 the New Hampshire Supreme Court – State’s Medical Marijuana law does not prohibit reimbursement but does not require reimbursement
- In 2018 Maine Supreme Court employers not required to reimburse for WC treatment

Some Stakeholder Questions

- Can or should medical marijuana be used to treat a workplace injury?
- How does it affect the injured worker's job?
 - Workplace
 - Drug-free
 - Hiring practices
 - Promote safety
 - Determination of impairment?
 - Impact on WC benefits when worker is injured is under the influence while working?
 - Montana says employee not eligible for benefits if medical marijuana is the major contributing factor

Questions?