

Risk Management - Employers Face Challenges on Marijuana Legalization, Business Insurance, ft. Tad Devlin

Tad A. Devlin, partner in the Kaufman Dolowich & Voluck San Francisco office, was quoted in Judy Greenwald's article published in *Business Insurance* (Oct. 31, 2016) on marijuana propositions and the workplace.

Recreational and medical marijuana initiatives that are on next week's ballots in several states will create challenging issues for employers, say experts.

There are either eight or nine initiatives on state ballots in next Tuesday's election, based on how they are tallied.

Five states — Arizona, California, Maine, Massachusetts and Nevada — would legalize the recreational use of pot, while Florida, Arkansas and North Dakota will decide whether marijuana can be used for medical purposes.

Sometimes also counted is a Montana ballot initiative that is focused on the issue of easing restrictions on an existing medical marijuana law.

The country could double the number of states that allow the recreational use of marijuana and could potentially expand the therapeutic benefits of marijuana use to millions of Americans," says Washington-based NORML, which advocates legalizing marijuana.

Among the issues raised by the various initiatives are the conflict between state and federal law on the issue, given that the drug remains illegal under federal law. Tad A. Devlin, a partner with Kaufman, Dolowich & Voluck L.L.P. in San Francisco, said, for instance, issues can arise in a state where marijuana is legal for recreational use, but a construction project is operating on federal land or with federal funding.

There are also questions about the efficacy, reliability and admissibility of marijuana testing, said Mr. Devlin. "There's not a breath, blood or urine test with standard benchmarks" with respect to marijuana's presence, he said. There is also uncertainty as to marijuana's "shelf life" in people's systems, he said.

Mr. Devlin said the challenges created by legalized marijuana can be overcome with proper policies and procedures, rank and file training and ensuring that the work force understands the rules. With these factors in place, "there should be much less potential for disruption," he said.