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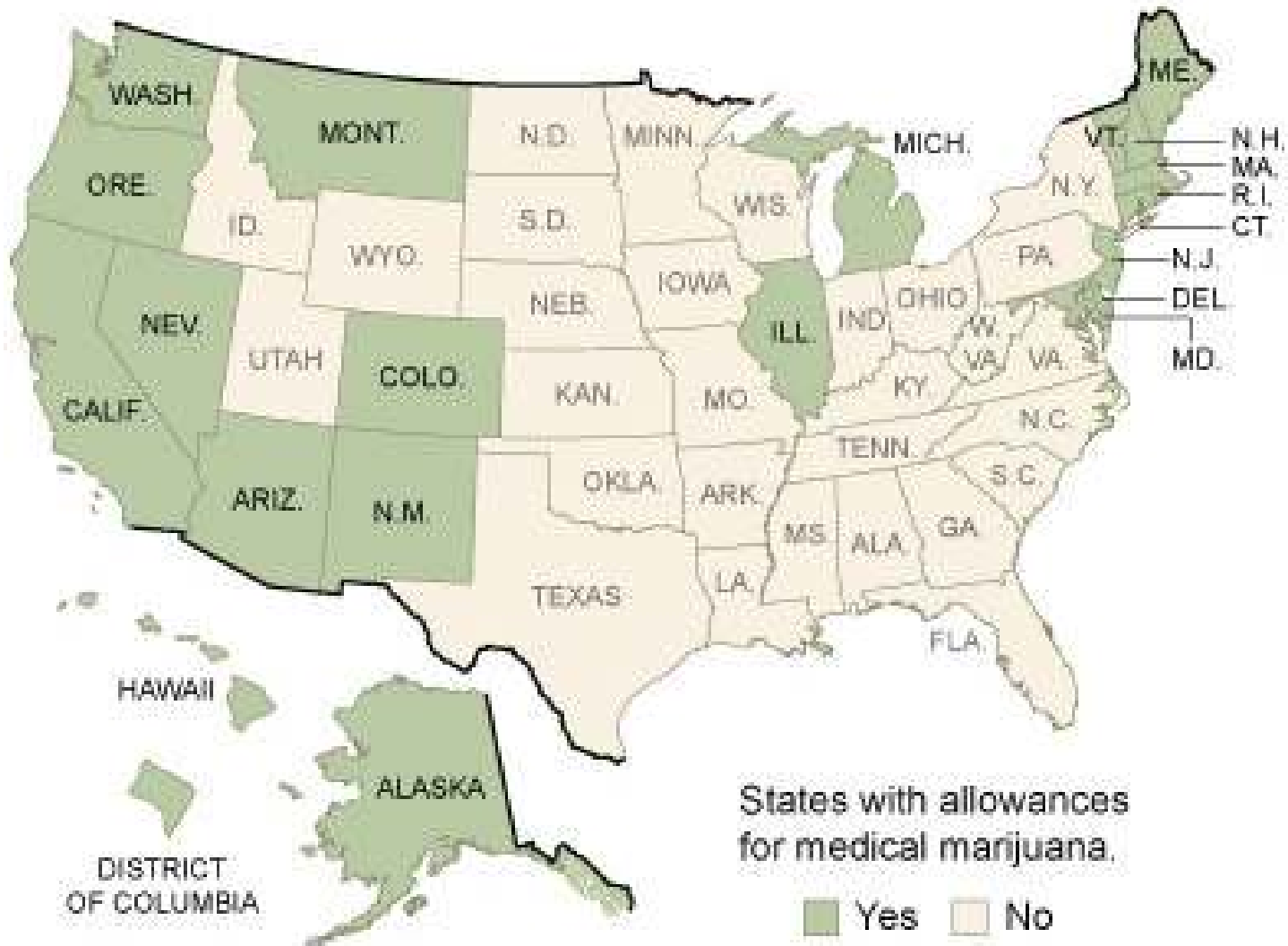
Illinois Hotel & Lodging Association

Medical Marijuana Comes to Illinois

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Marijuana Laws

Source: The New York Times, January 2014

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Marijuana Laws Increasing

- 20 states (and D.C.) have enacted legislation providing for the non-criminal use of marijuana for medical purposes
- Two states (CO and WA) have legalized recreational use of marijuana
- In past three years, eight states have passed these laws (most recent: Illinois, which went into effect January 1, 2014)

Illinois Law

- General provisions of the *Compassionate Use of Medical Cannabis Pilot Program Act*.
 - Pilot program – ends in four years
 - Small amount of marijuana (2.5 oz. every 14 days) from registered dispensary
 - Debilitating medical conditions
 - Must register with the State, which reviews documentation supporting condition and issues registration card
 - Thereafter, must possess registry identification card
 - Established physician

Intersection of State and Federal Law

- Conflict between state and federal law, under which marijuana is still illegal
- Employers that must comply with federal law, e.g., Dept. of Transportation regulations or the Drug-Free Workplace Act, would violate federal law if they overlooked medical marijuana use
- U.S. Dept. of Justice has deprioritized marijuana enforcement in states with medical marijuana laws

Illinois Law

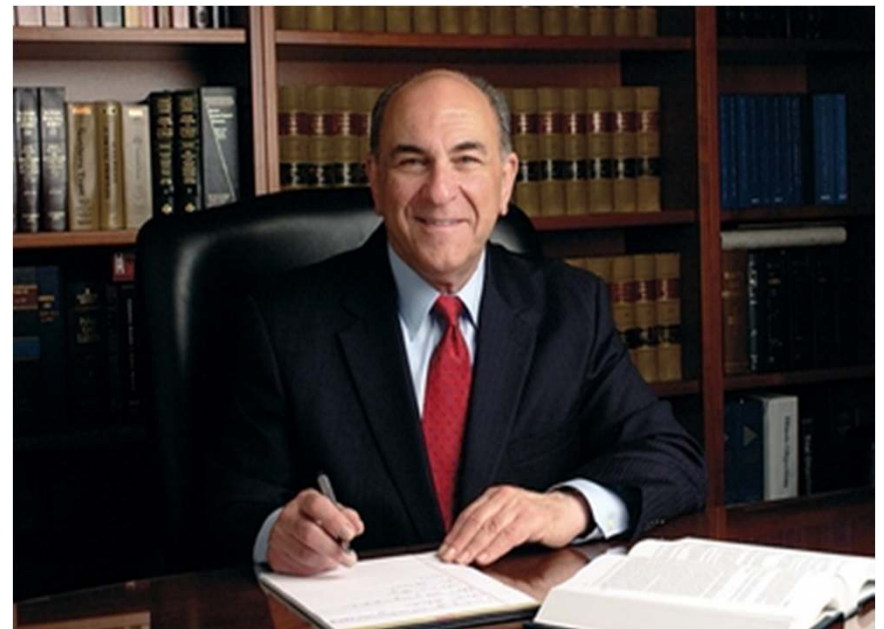
- How does Illinois' law compare with that in other states?
 - Illinois expressly prohibits discrimination against registered users unless failing to do so would put the employer in violation of federal law or cause it to lose funding or a license under federal law
 - Most other states' laws do not contain civil protections for registered users
 - Case law from these states (mostly favorable to employers) is thus of limited value

Minimal Impact on Employers?

“[The law] should have minimal impact” on employers...“If they have a zero-tolerance drug policy, this doesn’t change that.

They can make any rules they wish. It would be the same rules they have now relative to other medications employees take.”

- IL Rep. Lou Lang (chief sponsor)



Employers' Rights

- Employers still have strong rights under the law
- Under the law, an employer still can:
 - Adopt reasonable rules regarding consumption, storage, or timekeeping requirements for registered users
 - Enforce its policy on drug testing, including a zero-tolerance or drug-free workplace provided that the policy is applied in a nondiscriminatory manner
 - Prohibit employees who are registered users from using, possessing, or being impaired by marijuana while on the employer's premises and during hours of employment

More Employers' Rights

- Take disciplinary action where they observe specific, articulable symptoms (e.g., unusual speech or actions) which leads to conclusion that registered user is impaired (if the employee cannot refute the determination)
- Discipline a registered user who tests positive for marijuana if the positive test puts the employer in violation of federal law or jeopardizes federal contracts or funding
- Health insurance plans generally are not required to cover medical marijuana
- Prohibit a guest, client, customer, or visitor to use legally prescribed cannabis on or in their property

Drug Testing Policies

- How do you handle a positive drug test for new hires or current employees?
 - Employers subject to federal drug-free workplace laws and/or DOT regulations should not change their practices
 - For other employers, disciplining registered users solely on the basis of a positive random or post-accident test for marijuana (without any suspicion that the employee is impaired) or a pre-employment drug test could be risky



Drug Testing Policies

- Illinois' law also contains several defenses for employers:
 - No liability where employer has a “good faith belief” that the registered user was impaired at work or used or possessed marijuana at work
 - No liability for injury to a third party if the employer neither knew nor had reason to know the employee was impaired

Drug Testing Policies

- My employee tested positive for drugs. Now what?
 - Is it cannabis?
 - Is the employee a known registered marijuana user?
 - Did employer reasonably believe that the registered user was impaired at work or used or possessed marijuana at work?
 - Would failing to discipline the employee violate federal law or jeopardize federal funding or contracts for the employer?

Best Practices

- Talk to your counsel: Review your substance abuse policies, drug testing approach, and collective bargaining agreements to ensure compliance
- You need not allow employees to be under the influence of marijuana while at work, but the safest approach is refraining from disciplining registered users solely on the basis of a positive test for cannabis absent suspicion of impairment
- Train managers to recognize signs of impairment and properly respond to inquiries regarding medical marijuana
- Keep information confidential and closely review discipline