

Can you be fired from your job?

While there is a right that allows the use of medical marijuana for certain disabilities, whether employers can refuse to hire or fire a person who uses medical marijuana is not that clear. Similar to many other states, Florida has promoted drug free workplaces, and if an employer implements a drug-free workplace and complies with the drug-free workplace requirements, an employer may require testing for drugs and alcohol, including marijuana. See § 440.101, Fla. Stat. et seq. To the extent that an employer does not comply with the requirements of Florida law for a drug free workplace, it cannot rely on the exemption to test, fire or hire employees. However, all workplaces for state employees are deemed to be drug-free workplaces. § 112.0455, Florida Statutes.

To the extent that an employer is not a “drug free” workplace as defined by Section 440 or 112, then medical marijuana would be treated as any other prescribed medication that may impair a person’s ability to do a job. The employer must consider each individual’s circumstances to determine whether a reasonable accommodation of the underlying disability is possible and the person can still do the job with the accommodation. In other words, if a person can do the essential requirements of the job while on medical marijuana, then the accommodation may be appropriate.

There are two exceptions. The first is whether the use of marijuana creates an undue hardship to the operation of a business, which means an action requiring significant difficulty or expense. The other issue is whether the use of marijuana causes a real, and not stereotypical, direct threat to the safety of the employee with a disability and other employees, then the employer may be permitted to not hire an applicant or terminate an existing employee for the use of medical marijuana.