

# /// PENSER NEWS

Unemployment Insurance Newsletter

Spring 2013

*Mt. Rainier from Mirror Lake, Washington.*



## MARIJUANA LEGALIZATION

Colorado and Washington were the first two states to legalize recreational marijuana in last November's election. However, what has happened since the election?

In Washington, Initiative 502 legalized possession and personal use of one ounce or less for adults 21 and over. The consumption of marijuana in public spaces and driving under the influence remains illegal. Furthermore, legal sales will not begin until after Washington State's Liquor Control Board sets up a licensing system for the manufacture and sale of marijuana due December 2013.

The federal government's response to these measures are uncertain at this point because it continues to be illegal under the federal Controlled Substances Act. And, because federal law still considers marijuana a banned substance, it must maintain a drug-free workplace.

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# I-502 VS EMPLOYER DRUG POLICIES

Marijuana is legal in Washington State, but the new law gives no protection from workplace drug policies. Many employers will continue to rely on tests showing marijuana use and enforce drug policies if those tests come back positive.

Voters agreed to make marijuana legal for recreational use for adults 21 and up, but the new law gives no protection in the workplace.

In this new frontier of drug policy, employers could simply view employees' after-hours use of marijuana like alcohol, intervening only when necessary. But few employers appear to be loosening bright-line drug policies.

Enforcing such policies for after-hours use is likely to be contentious, especially for unionized workers, because most workplace marijuana tests don't differentiate past use — even weeks prior — from the impairing buzz of a freshly smoked joint.

There is no wiggle room for many manufacturing and transportation jobs and even less so in public safety.

Courts across the country have upheld the right of employers to drug-test and fire workers with THC in their urine, even those with valid medical marijuana authorizations. The Washington Supreme Court, in 2011, ruled in favor of employers, upholding the firing of a call-center worker who used marijuana to treat migraines.

Employers have good reasons — from productivity to absenteeism to cheaper insurance coverage — to maintain drug-free workplaces.

In the wake of I-502, employers are advised to update policies to prohibit drugs illegal under state or federal law — "with an exclamation point on federal law," and ban any detectable amount, which takes the gray area away.

## Do you know about EAMS?

EAMS is Employer Account Management Services. It is a one-stop menu of internet tools for filing, paying and managing your unemployment tax account. With this you can:

- Manage and update your unemployment tax account information online;
- Get online help from unemployment tax specialists;
- View your tax rate.

In order to create an EAMS account, visit [www.esd.wa.gov](http://www.esd.wa.gov) and enter EAMS in the search window.

**IMPORTANT**—If an EAMS account is created, please *do not* update or change your mailing address. The mailing address should show 700 Sleater-Kinney Road SE, Suite B#170, Lacey, WA 98503.

This is Penser's mailing address and (as your third-party claims administrator) if this address is changed, Penser will no longer receive your unemployment claims and claims may fall through the cracks.

# MEDICAL MARIJUANA

Employers that operate in the 18 states where pot is now legal as a prescription painkiller are struggling to reconcile zero-tolerance drug policies with a patient's right to get high.

Employers are grappling with what questions they are legally allowed to ask job candidates and whether random drug tests constitute discrimination under the Americans with Disabilities Act.

Employers in all sectors have a "general duty" to provide a safe work environment under the Occupational Safety and Health Administration (OSHA) which some suggest is reason enough to terminate workers who test positive for THC.

Say an employee comes to work under the influence (of any substance) and gets into a car accident or makes a critical mistake. It's the employer who gets sued.

It really boils down to this: An employer's right to maintain a drug-free workplace is critical. It protects the safety of all workers and limits exposure to potentially costly litigation.

While the State's medical marijuana laws protect patients from criminal prosecution, it provides no protection on the job. After all, pot, for recreational or medical use, remains classified as an illegal substance under federal law.

Washington's new law does not directly address employers' drug policies. However, a Washington State Supreme Court case addressing the issue of medical marijuana determined the State's medical marijuana law did not prevent an employer from firing an employee for medical marijuana use.

As the courts continue to rule on medical marijuana in the workplace, employers will gain the guidance they need to create drug policies that protect both their business interests and the rights of their employees.

## Shared Work Program

For the past three years, more than 97% of employers that have used Washington's Shared-Work Program say they'd recommend the program to other businesses.

In each of those three years, a large majority said the program helped or probably helped their business survive the recession.

The program allows employers to reduce the hours of their full-time employees by up to 50%, while the workers collect partial unemployment benefits to make up for some of the lost wages. This translates into immediate payroll savings for participating businesses and prevents the loss of skilled employees.

The program is open to all sizes of employers.



If you are facing a temporary decline in business, the Shared-Work program offers you an alternative to laying off workers.

For assistance and an application or more information, call: 800-752-2500 (toll-free)

## SPOTLIGHT

Established in 1968, Penser was set up, specifically, to represent state-funded employers on matters of workers' compensation. In the mid-seventies, Penser expanded its services to include unemployment and self-insurance.

Headquartered in Olympia, WA, Penser North America, Inc. is one of the oldest Third-Party Administrators (TPA) in Washington State. After 45 years, what started as a new concept with modest beginnings has grown to a full-fledged force in the third-party administration and human resource areas. Penser has set the standard by which other TPA's now operate.

By partnering with Penser, customers benefit from a wealth of knowledge and experience unparalleled in the Northwest and beyond. Penser's commitment to excellence extends to your employees, ensuring respect and a timely and complete response to their needs. Our team concept of claims management extends from each of our departments to your organization, working together to produce a financially sound program.

Penser continues to provide our clients with updated information, training and consulting services that have earned us the reputation of being the best in the industry as reflected by the refunds and lower costs our clients continue to enjoy.

Our Unemployment Division staff are trained on multi-state unemployment rules, policies and procedures. Each claims manager is familiar with the companies and industries they represent, which allows them to provide top-quality service.

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