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"HELP... I Keep Hiring Toxic Employees!"

June, 2014

- The DFEH Pre-employment guidelines.
 - What you can and can't ask.
- Applicants and employees with medical marijuana cards.
- How to manage the chronically absent.

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The attached material must not be considered legal advice. The sample forms and policies are for educational purposes only. We strongly recommend that you consult with legal counsel before adopting or implementing any of the attached sample forms and policies so as to avoid potential liability.

Table of Contents

Department of Fair Employment & Housing (DFEH) Form 161 Employment Inquiries...	2
DFEH-184 Employment Discrimination Based on Disability	5
Authorization to Obtain Investigation Reports	7
Notification of Request for Investigative Consumer Report	8
Summary of Employee Rights Under Fair Credit Reporting Act.....	9
Pre-Employment Inquiries and Arrest & Conviction	12
Medical Marijuana Federal Law v. State Law	13
DOT's Position on Medical Marijuana – October 22, 2009	14
DOT's Position on Medical Marijuana – December 3, 2012	15
California Law Regarding Medical Marijuana	16
Updating Employee Job Descriptions.....	18
Drug & Alcohol Policy with Acknowledgment.....	20
Attendance Policy	22
Employee Performance Appraisal	23
Employee Action Notice	27

California Department of Fair Employment & Housing Fact Sheet

EMPLOYMENT INQUIRIES

WHAT CAN EMPLOYERS ASK APPLICANTS AND EMPLOYEES?

The Department of Fair Employment and Housing has developed this guide to provide employers with guidance relating to inquiries that can be made to applicants and employees.

The California Fair Employment and Housing Act (FEHA) prohibits any non-job-related inquiries of applicants or employees, either verbally or through the use of an application form, that express, directly or indirectly a limitation, specification or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, or any intent to make such a limitation, specification, or discrimination.

The regulations of Fair Employment and Housing Commission indicate that inquiries that, directly or indirectly, identify an individual on a basis enumerated in the Act are **unlawful**. However, it is not unlawful for an employer to collect applicant flow data and other record keeping data for statistical purposes. Misuse of this data constitutes a violation of the Fair Employment and Housing Act.

APPLICANTS

The FEHA also prohibits an employer from requiring any medical or psychological examination or inquiry of any applicant or to make any inquiry whether an applicant has a mental or physical disability or medical condition. It is also unlawful to make an inquiry regarding the nature and severity of a mental or physical disability or medical condition. However, an employer may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

Once an employment offer has been made to an applicant, but prior to the commencement of employment duties, an employer may require a medical or psychological examination provided that:

- the examination or inquiry is job-related and consistent with business necessity and;
- that all entering employees in the same job classification are subject to the same examination or inquiry.

EMPLOYEES

An employer may not require any medical or psychological examination or make any inquiry of an employee, or inquire whether an employee has a mental or physical disability or medical condition or inquire into the severity of the disability or condition.

However, an employer may require any medical or psychological examination or make inquiries that it can show are job-related and consistent with business necessity. An employer may conduct voluntary medical examinations, including medical histories, which are part of an employee health program available to the employee at the work site.

The Employment Inquiries table is a guide and is not intended to be an exhaustive list of all acceptable and unacceptable inquiries. Those questions considered unacceptable are likely to limit the employment opportunities of persons protected by the Fair Employment and Housing Act.

EMPLOYMENT INQUIRIES

ACCEPTABLE	SUBJECT	UNACCEPTABLE
Name	NAME	<ul style="list-style-type: none"> • Maiden name
Place of residence	RESIDENCE	<ul style="list-style-type: none"> • Questions regarding owning or renting.
Statements that hire is subject to verification that applicants meet legal age requirements.	AGE	<ul style="list-style-type: none"> • Age • Birth date • Date of attendance/completion of school • Questions which tend to identify applicants over 40
Statements/inquiries regarding verification of legal right to work in the United States.	BIRTHPLACE, CITIZENSHIP	<ul style="list-style-type: none"> • Birthplace of applicant or applicant's parents, spouse or other relatives. • Requirements that applicant produce naturalization or alien card prior too employment.
Languages applicant reads, speaks or writes if use of language other than English is relevant to the job for which applicant is applying.	NATIONAL ORIGIN	<ul style="list-style-type: none"> • Questions as to nationality, lineage, ancestry, national origin, descent or parentage of applicant, applicant's spouse, parent or relative.
Statement by employer of regular days, hours, or shifts to be worked.	RELIGION	<ul style="list-style-type: none"> • Questions regarding applicant's religion. • Religious days observed.
<p>Name and address of parent or guardian if applicant is a minor.</p> <p>Statement of company policy regarding work assignment of employees who are related.</p>	SEX, MARITAL STATUS, FAMILY	<ul style="list-style-type: none"> • Questions to indicate applicant's sex, marital status, number/ages of children or dependents. • Questions regarding pregnancy, child birth, or birth control • Name/address of relative, spouse or children of adult applicant.
	RACE, COLOR, SEXUAL ORIENTATION	<ul style="list-style-type: none"> • Questions to applicant's race, color, or sexual orientation. • Questions regarding applicant's complexion, color of eyes, hair or sexual orientation.
	CREDIT REPORT	<ul style="list-style-type: none"> • Any report which would indicate information which is otherwise illegal to ask, e.g , marital status, age, residency, etc.
Statement that a photograph may be required after employment.	PHYSICAL DESCRIPTION, PHOTOGRAPHS, FINGERPRINTS	<ul style="list-style-type: none"> • Questions as to applicant's height/weight. • Requiring applicant to affix a photograph to application or submit one at his/her option. • Require a photograph after interview but before employment.
<p>Employer may inquire if applicant can perform job-related functions.</p> <p>Statement that employment offer may be made contingent upon passing a job-related mental/physical examination.</p>	MENTAL/PHYSICAL DISABILITY, MENTAL CONDITION (APPLICANTS)	<ul style="list-style-type: none"> • Any inquiry into the applicant's general health, medical condition, or mental/physical disability. • Requiring a psychological/medical examination of any applicant.

A medical/psychological examination/inquiry may be made as long as the examination/inquiry is job-related and consistent with business necessity and all applicants for the same job classification are subject to the same examination/inquiry.	MENTAL/PHYSICAL DISABILITY, MEDICAL CONDITION (POST- OFFER/PRE-EMPLOYMENT)	<ul style="list-style-type: none"> Any inquiry into the applicant's general health, medical condition, or physical/mental disability, if not job-related and consistent with business necessity.
A medical/psychological examination/inquiry may be made as long as the examination is job-related and consistent with business necessity.	MENTAL/PHYSICAL DISABILITY, MEDICAL CONDITION (EMPLOYEES)	<ul style="list-style-type: none"> Any inquiry into the employee's general health, medical condition, or mental/physical disability, if not job-related and consistent with business necessity.
Job-related questions about convictions, except those convictions which have been sealed, or expunged, or statutorily eradicated.	ARREST, CRIMINAL RECORD	<ul style="list-style-type: none"> General questions regarding arrest record.
Questions regarding relevant skills acquired during U.S. military service.	MILITARY SERVICE	<ul style="list-style-type: none"> General questions regarding military service such as dates/type of discharge. Questions regarding service in a foreign military.
Requesting lists of job-related organizations, clubs or professional societies omitting indications of protected bases.	ORGANIZATIONS, ACTIVITIES	<ul style="list-style-type: none"> General questions regarding organizations, clubs, societies and lodges.
Name of persons willing to provide professional and/or character references for applicant.	REFERENCES	<ul style="list-style-type: none"> Questions of applicant's former employers or acquaintances which elicit information specifying applicant's race, etc.
Name and address of person to be notified in case of accident or emergency.	NOTICE IN CASE OF EMERGENCY	<ul style="list-style-type: none"> Name, address, and relationship of relative to be notified in case of accident or emergency.

NOTE: Any inquiry, even though neutral on its face, which has an adverse impact on persons on a basis enumerated in the Fair Employment and Housing Act, is permissible only if it is sufficiently related to an essential job function to warrant its use.

For more information, contact the Department
toll free at: **(800) 884-1684**

TTY Number: **(800) 700-2320**

or visit our Web site at: www.dfeh.ca.gov

This publication can be made available in Braille, large print, computer disk, and tape cassette.

**STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
2218 Kausen Drive, Suite 100
Elk Grove, CA, 95758**



DFEH-161 (8/01)

Filing a Complaint

Employees or job applicants who believe that they have been discriminated against or harassed because of a disability may, within **one year** of the alleged discrimination, file a complaint with DFEH by calling (800) 884-1648. DFEH processes complaints filed by persons with terminal illnesses on a priority basis.

DFEH serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes. If DFEH finds sufficient evidence of discrimination and settlement efforts fail, the Department may file a formal accusation. The accusation may lead to either a public hearing before the Fair Employment and Housing Commission or a lawsuit filed by DFEH on behalf of the complaining party.

If the Commission or court finds that discrimination has occurred, it can order remedies including:

- Fines or damages for emotional distress from each employer or person found to have violated the law
- Hiring or reinstatement
- Back pay or promotion
- Changes in the policies or practices of the involved employer

Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with DFEH and a Right-to-Sue Notice has been issued.

For more information, see DFEH publication 159 "Guide for Complainants and Respondents."



State of California
Department of Fair Employment & Housing

DFEH-184 (04/04)

Employment Discrimination Based on Disability

The *Fair Employment and Housing Act* (FEHA), enforced by the California Department of Fair Employment and Housing (DFEH), prohibits employment discrimination and harassment based on a person's disability or perceived disability. It also requires employers to reasonably accommodate individuals with mental or physical disabilities unless the employer can show that to do so would cause an undue hardship.

The law covers mental or physical disabilities (including AIDS/HIV), regardless of whether the conditions are presently disabling. It also covers medical conditions, which are defined as either cancer or genetic characteristics.

Disability does **not** include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance abuse disorders resulting from the current illegal use of drugs.

FEHA vs. the Federal Americans with Disabilities Act

The FEHA provides broader protections for persons with disabilities than federal law. California employers with five or more employees must follow the FEHA. For example, California law has broad definitions of

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(800) 884-1684

TTY number at (800) 700-2320
or visit our web site at www.dfeh.ca.gov

In accordance with the California Government Code and ADA requirements, this publication can be made available in Braille, large print, computer disk, or tape cassette as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact DFEH at the numbers above.



mental disability, physical disability, and medical condition.

Under California law, a disability must only “limit” a major life activity. The disability does not have to involve a “substantial limitation” as under federal law, to be considered a disability. Whether a condition or disability “limits” a major life activity is determined regardless of any mitigating measure, such as medication, prosthesis, etc., unless the mitigating measure itself limits a major life activity.

Employment Inquiries

The FEHA prohibits employers either verbally or in writing from:

- Requiring any medical/psychological examination/inquiry of any applicant or employee prior to making an offer of employment
- Inquiring directly or indirectly as to whether an applicant or employee has a mental/physical disability or medical condition
- Inquiring about the nature and severity of a mental/physical disability or medical condition

However, an employer may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant’s request for reasonable accommodation.

Once an employment offer has been made to an applicant, but before the start of duties, an employer may require a medical/psychological examination. However, the examination/inquiry must be job related and consistent with business necessity and all entering employees in the same job classification must be subject to the same examination or inquiry.

An employer may also conduct voluntary medical examinations, including medical histories, which are part of an employee health program. This information is retained separate and apart from employment and personnel records.

Reasonable Accommodation

The employer is required to explore with the employee all possible means of reasonably accommodating a person prior to rejecting the person for a job or making any employment-related decision. The accommodation may arise from a mitigating measure, such as medication taken for the primary disability.

An accommodation is reasonable if it does not impose an undue hardship on the employer’s business. Reasonable accommodation can include, but is not limited to, changing job duties or work hours, providing leave, relocating the work area, and/or providing mechanical or electrical aids. An employer may obtain help from government agencies and outside experts to determine whether accommodation is possible.

Employees with disabilities may be covered by the *California Family Rights Act* or the federal *Family Medical Leave Act*.

Independent Medical Opinion

An employer must allow an applicant the opportunity to submit an independent medical opinion if there is a dispute as to whether the person can perform the essential functions of a position. Failure to allow the submission of an independent medical opinion may be a separate violation of the law.

Discrimination

Any employment-related or personnel decision based on either of the following reasons is not discriminatory:

- The person is unable to perform the essential functions of the job and no reasonable accommodation exists that would enable the person to perform the “essential functions” of the job.
- The person would create an imminent and substantial danger to self or others by performing the job and no reasonable accommodation exists that would remove or reduce the danger.

The following two reasons commonly raised by employers **are not** legally acceptable excuses for discriminating against persons with disabilities:

- Possibility of future harm to the person or to others
- Employing such individuals will cause an employer’s insurance rates to rise

AUTHORIZATION TO OBTAIN INVESTIGATION REPORTS

I _____, hereby authorize _____
(Name of Applicant) (Company)
to obtain any investigation reports on me in connection with my application for employment
and/or at any time during my employment with _____ if I am
(Company)
hired or if I am a current employee, for employment purposes including, but not limited to,
reassignment, promotion, retention and rehiring.

I have received and read a Notice and Disclosure explaining that such investigation
reports may include information concerning my creditworthiness, credit standing, credit
capacity, character, general reputation, personal characteristics, and/or mode of living. This
information may be obtained from personal interviews with my professional and personal
acquaintances.

I understand that _____ and its agents are not responsible for
(Company)
the accuracy or completeness of the information contained in any such reports. I release
_____ and its agents from all liability, claims, and lawsuits with
(Company)
respect to the information obtained from any or all of the sources used by
_____.
(Company)

I understand that this authorization is not an offer for employment by
_____ and that any false or misleading information I have provided
(Company)
to _____ may result in a refusal to hire, promote, reassign, or
(Company)
continued employment.

I also understand that this authorization is a continuing authorization and will remain
valid until such time as I inform _____, in writing, that I wish
(Company)
to revoke this authorization.

Date: _____ By: _____
(Signature of Applicant)
By: _____
(Name of Applicant)

[] By checking this box, I have indicated that I would like a copy of a credit report if one is
obtained by _____.
(Company)

**NOTIFICATION OF REQUEST FOR INVESTIGATIVE CONSUMER REPORT
(UNDER FAIR CREDIT REPORTING ACT)**

(Date)

(Name of Applicant)

(Street Address)

(City, State, Zip)

Dear _____:
(Name)

This letter serves to notify you that _____ has ordered an investigative consumer
(Company)
report about you. This report may include information about your character, general reputation, personal characteristics, and mode of living. Such information may be obtained through personal interviews with your professional and personal acquaintances.

You have the right to request a complete disclosure of the nature and scope of the investigation that was requested. You must make this request in writing and within a reasonable period of time after receipt of this Notice and Disclosure.

If you make this written request, we are required to and will provide a complete disclosure of the nature and scope of the investigation to you in a written statement. You will receive this written statement no later than five (5) days from the date we receive your request for disclosure or the date we first requested the report, whichever is later in time.

Enclosed is a copy of A Summary of Your Rights Under the *Fair Credit Reporting Act*.

Date: _____

(Signature & Title of Company Representative)

(Typed Name & Title of Company Representative)

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, D.C. 20006.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - a person has taken adverse action against you because of information in your credit report;
 - you are the victim of identity theft and place a fraud alert in your file;
 - your file contains inaccurate information as a result of fraud;
 - you are on public assistance;
 - you are unemployed but expect to apply for employment within 60 days.

In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.consumerfinance.gov/learnmore for additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.consumerfinance.gov/learnmore for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.
- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.consumerfinance.gov/learnmore.
- **You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-567-8688.
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.consumerfinance.gov/learnmore.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:

TYPE OF BUSINESS:	CONTACT:
1.a. Banks, savings associations, and credit unions with total assets of over \$10 billion and their affiliates.	a. Bureau of Consumer Financial Protection 1700 G Street NW Washington, DC 20006
b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the Bureau:	b. Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 (877) 382-4357
2. To the extent not included in item 1 above:	
a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks	a. Office of the Comptroller of the Currency Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050
b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act	b. Federal Reserve Consumer Help Center P.O. Box 1200 Minneapolis, MN 55480

TYPE OF BUSINESS:	CONTACT:
c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations	c. FDIC Consumer Response Center 1100 Walnut Street, Box #11 Kansas City, MO 64106
d. Federal Credit Unions	d. National Credit Union Administration Office of Consumer Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street Alexandria, VA 22314
3. Air carriers	Asst. General Counsel for Aviation Enforcement & Proceedings Department of Transportation 400 Seventh Street SW Washington, DC 20590
4. Creditors Subject to Surface Transportation Board	Office of Proceedings, Surface Transportation Board Department of Transportation 1925 K Street NW Washington, DC 20423
5. Creditors Subject to Packers and Stockyards Act	Nearest Packers and Stockyards Administration area supervisor
6. Small Business Investment Companies	Associate Deputy Administrator for Capital Access United States Small Business Administration 406 Third Street, SW, 8th Floor Washington, DC 20416
7. Brokers and Dealers	Securities and Exchange Commission 100 F St NE Washington, DC 20549
8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations	Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090
9. Retailers, Finance Companies, and All Other Creditors Not Listed Above	FTC Regional Office for region in which the creditor operates or Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357



U.S. Equal Employment Opportunity Commission

Pre-Employment Inquiries and Arrest & Conviction

Federal law does not prohibit employers from asking about your criminal history. But, federal EEO laws do prohibit employers from discriminating when they use criminal history information. Using criminal history information to make employment decisions may violate Title VII of the Civil Rights Act of 1964, as amended (Title VII).

1. Title VII prohibits employers from treating people with similar criminal records differently because of their race, national origin, or another Title VII-protected characteristic (which includes color, sex, and religion).
2. Title VII prohibits employers from using policies or practices that screen individuals based on criminal history information if:
 - They significantly disadvantage Title VII-protected individuals such as African Americans and Hispanics; AND
 - They do not help the employer accurately decide if the person is likely to be a responsible, reliable, or safe employee.

See also:

- [What You Should Know About the EEOC and Arrest and Conviction Records](#)
- [Enforcement Guidance on Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964](#)

Difference Between Arrest Records and Conviction Records

The fact that an individual was arrested is not proof that he engaged in criminal conduct. Therefore, an individual's arrest record standing alone may not be used by an employer to take a negative employment action (e.g., not hiring, firing or suspending an applicant or employee). However, an arrest may trigger an inquiry into whether the conduct underlying the arrest justifies such action.

In contrast, a conviction record will usually be sufficient to demonstrate that a person engaged in particular criminal conduct. In certain circumstances, however, there may be reasons for an employer not to rely on the conviction record alone when making an employment decision.

Several states' laws limit employers' use of arrest and conviction records to make employment decisions. These laws may prohibit employers from asking about arrest records or require employers to wait until late in the hiring process to ask about conviction records. If you have questions about these kinds of laws, you should contact your state fair employment agency for more information.

Consumer Protections and Criminal Background Checks

Employers that obtain an applicant's or employee's criminal history information from consumer reporting agencies (CRAs) also must follow the Fair Credit Reporting Act (FCRA). For example, FCRA requires employers to:

- Get your permission before asking a CRA for a criminal history report;
- Give you a copy of the report and a summary of your rights under FCRA before taking a negative employment action based on information in the report.
- Send you certain notices if it decides not to hire or promote you based on the information in the CRA report.

If you would like to know more about FCRA, visit the [Federal Trade Commission's \(FTC\) website](#) (the federal agency that enforces FCRA). Or contact the FTC at 1-877-FTC-HELP (1-877-832-4357); TTY: 1-866-653-4261.

Federal Law v. State Law

Federal Law and theses state laws conflict due to Federal Law and Policy – especially 21 United States Code Section 812 (b)(1) Schedule I c (17) prohibiting tetrahydrocannabinoids.

Medical Marijuana is not a legitimate medical explanation under DOT although Marinol is.



DOT's Position - October 22, 2009:

The Department of Transportation's Drug and Alcohol Testing Regulation – 49 CFR Part 40, at 40.151(e) – does not authorize “medical marijuana” under a state law to be a valid medical explanation for a transportation employee's positive drug test result.

--- Jim L. Swart, Director Office of the Secretary of Transportation, Office of Policy and Compliance, Department of Transportation



DOT's Position - December 3, 2012:

Recently, some states passed initiatives to permit use of marijuana for so-called “recreational” purposes. We want to make it perfectly clear that the state initiatives will have no bearing on the Department of Transportation’s regulated drug testing program. The Department of Transportation’s Drug and Alcohol Testing Regulation – 49 CFR Part 40 – does not authorize the use of Schedule I drugs, including marijuana, for any reason.

-- Jim L. Swart, Director Office of the Secretary of Transportation, Office of Policy and Compliance, Department of Transportation



California

Cal. Health and Safety Code Sections 11362.5-83

Applicability:

Law applies to physicians, patients and caregivers

Quantity Allowed:

8oz. or less dried; or 6 or less mature; or 12 or less immature plants

How Obtained:

Growing permitted – otherwise not specified



California (cont.)

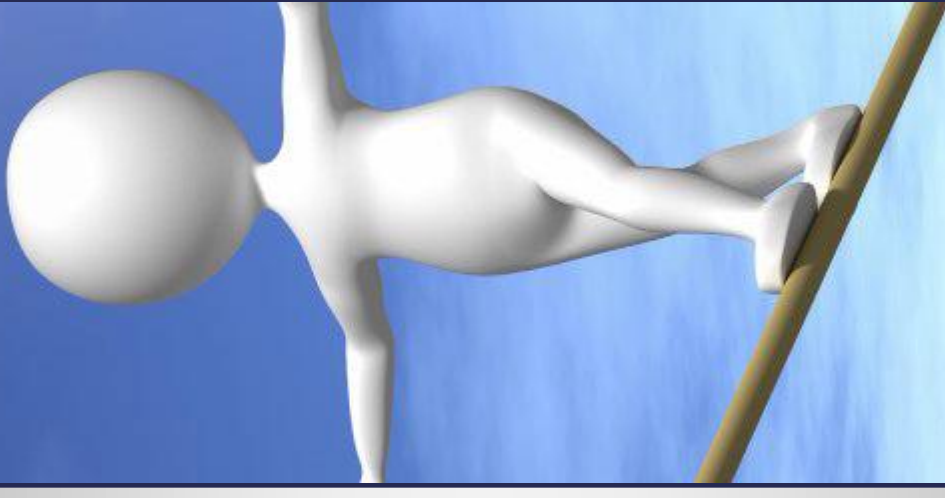
Liability Protections:

Physicians: protected from criminal prosecution when recommending Marijuana for medical use

Patients and Caregivers: protected from arrest for possession, transportation, delivery or cultivation if patient or caregiver has a valid I.D. (NOTE: I.D. card is voluntary).

Statutory Requirements for Authorized Use:

No Registry Card required. I.D. Cards issued by State Department of Health. I.D. Cards are voluntary and must be renewed annually. New information must be verified by County Health Department Efforts to improve California Medical Marijuana laws thwarted in 2011.



Update Employee Job Descriptions

- Every job description to be in compliance with the Americans with Disability Act (ADA) should list “Essential Job Functions.”
- If the employee works in a safety-sensitive job category, one of the essential functions listed should be “the ability to work in a constant state of alertness and in a safe manner.”
- Educate yourself on the workplace related impairing effects of Marijuana.



Update Employee Job Descriptions (cont)

Workplace Related Impairing Effects of Marijuana Include:

- Inability to accurately gauge lengths of time and distance as well as impairment of hearing and vision and short term memory
- Inability to cope with sudden changes in surrounding and/or emergency situations
- Loss of balance
- Visual and/or auditory hallucinations
- Non-caring, uncommitted, unconcerned attitude
- Decreased cognitive reasoning
- Decreased motor coordination
- Inability to concentrate or remain focused on a single thought or idea
- Increased drowsiness, fatigue and lethargy



POSSESSION AND USE OF DRUGS AND ALCOHOL

The Company recognizes the employees' right to privacy; however, the Company is committed to providing a safe, efficient and productive work environment for all employees. In keeping with this commitment, employees and job applicants may be asked to undergo a drug/alcohol screening to determine the use of such substances. To further promote this goal, the Company will not tolerate the possession of or use of alcohol or drugs while on the Company's premises or time. Employees are required to report to work in appropriate mental and physical condition to perform their jobs in a satisfactory manner.

While on the Company's premises and while conducting Company related business activities which may occur off the Company's premises, no employee shall use, possess, distribute, sell or be under the influence of alcohol or drugs (except for the use of physician prescribed medication when the employee's supervisor has been advised of such prescribed use). The legal use of prescribed drugs is permitted on the job only if it does not impair an employee's ability to perform the essential functions of the job effectively and in a safe manner that does not endanger other individuals in the workplace.

Drug and alcohol tests may be conducted in any of the following situations:

POST OFFER: As a pre-qualification to assuming any position, prospective employees may be required to submit to a drug/alcohol test.

POST-ACCIDENT: Any current employee who is involved in an incident or accident while on duty, whether on or off the Company's premises, may be required to undergo a drug/alcohol test.

FITNESS FOR DUTY: This test may be required if significant and observable changes in an employee's performance, appearance, behavior, speech, etc. provides reasonable suspicion and probable cause to believe that the employee is under the influence of drugs or alcohol while on the Company's time or premises which could result in injury to the employee or fellow employees, or subject the Company to legal exposure, or public embarrassment, the Company may require the employee to submit to a drug test.

"Probable cause" shall exist when an employee's ability to perform their job duties is impaired. "Impaired" means that the employee's motor senses or judgment are or may be affected. Probable cause shall also exist if an employee is involved in either a job-related accident or violation of a safety rule or standard, which did or could have resulted in serious injury or property damage.

Positive results will result in discipline, including discharge. The employee may be offered the opportunity to participate in a rehabilitation program.

**POSSESSION AND USE OF DRUGS AND ALCOHOL
ACKNOWLEDGMENT FORM**

I have read and received a copy of the Company's Possession and Use of Drugs and Alcohol policy and fully understand my obligations and responsibilities as outlined therein.

Signed: _____ Date: _____

Witness: _____ Date: _____

ATTENDANCE POLICY

Every job with the Company is critical to meeting our goals. Continual absences and tardiness place a burden on your coworkers and ultimately affects the Company by decreasing the efficiency of the Company's operations. For this reason, all employees are required to arrive on time every day and keep absences to an absolute minimum.

It is your responsibility to notify the Company if you are going to be late or absent. If this occurs, you must notify your supervisor immediately but no later than _____ a.m./p.m. or _____ () hour(s) before the start of your regularly scheduled shift. If your supervisor is not available, leave a message for him or her with either [Administration or the Human Resources Department]. It is your responsibility to continue to call in until you personally have spoken with your supervisor regarding your tardiness or absence. Having a friend or relative contact the Company is not acceptable unless an emergency prevented the employee from personally contacting the Company.

When reporting an absence, the expected date of return must be provided. If unknown, the employee must call their supervisor daily. Failure to properly notify the Company in accordance with this policy will lead to disciplinary action.

Any employee who fails to report for work for three (3) consecutive working days without prior authorization will be deemed to have voluntarily resigned because of job abandonment.

Most of our employees keep their absences to a minimum. However, in some limited cases, there are a few employees who do abuse the sick/personal leave policy of the Company. Unauthorized or excessive absences or tardiness will not be tolerated and may result in discipline.

To protect against abuse of the policy, the following will apply to all absences:

Absences will be tracked by "incident" or "block" of days off where a block is one (1) or more days absent (excluding vacation). Employees will be counseled and given a written warning regarding attendance after _____ () incidents or "blocks" of absences during any _____ () month period. The warning will state that a doctor's note will be required any time the employee is absent during the next _____ () months.

The employee will not be eligible for a raise, transfer or promotion for ninety (90) days from the date of the first warning regarding attendance problems.

Please note, however, that the Company can, if it deems it has good cause, request a doctor's note from an employee at any time. Doctor and dental appointments will be excluded from the above unless judged as excessive by the supervisor.

If the absences and/or patterns of absence continue, the employee will be placed on Final Warning. Again, a doctor's note will be required for a _____ () month period for any absence that might arise. Should the absences continue, the employee will be discharged.

It should be noted that an employee with excessive absences can be discharged at any time pursuant to the provisions of the at will relationship if the employee is unable to perform the duties of the position at a satisfactory level.

EMPLOYEE PERFORMANCE APPRAISAL

Employee Name: _____ Job Title: _____

Department: _____ Yrs/Mos in Job Classification: _____

Hire Date: _____ Supervisor's Name: _____

Length of Time Supervising Employee: _____

Date of Last Appraisal: _____

Dates Covered by this Appraisal: _____

DEFINITION OF RATINGS

Indicate a numerical rating for each performance standard listed below according to the following:

STANDARD	NUMERICAL RATING	DEFINITION
Outstanding	5	This level of performance over a sustained period of time approaches the best that the employer can possibly expect of an employee in a given position. The employee at this level should have mastered every essential element of the assigned position and should be performing at a level well beyond what would normally be expected of the great majority of employees with similar duties.
Exceeds Requirements	4	An employee at this level should be meeting all of the position requirements in a manner indicating full understanding of all the required functions. The results achieved by the employee are consistently better than those that would be expected of most of the employees with similar duties performing to job standards.
Satisfactory	3	At this level, an employee is consistently performing at a standard or average performance level.
Needs Improvement	2	A provisional level for inexperienced newcomers or others whose performance is below the acceptable level. Some elements of the position may still require considerable supervision and instruction before performance satisfactorily meets position requirements.
Unsatisfactory	1	An employee at this level consistently performs below an acceptable level and should be placed on probation and is not eligible for a wage increase. A specific improvement period should be established for the employee to improve his or her performance to the job standard. In the case where improvement is not made, termination of employee should result.

5-Outstanding; 4-Exceeds Requirements; 3-Satisfactory; 2-Needs Improvement; 1-Unsatisfactory

When determining which rating is appropriate, consider the criteria listed under each standard. Comments and examples should be provided to support ratings and are required when a ranking of 1, 2, 4 or 5 is given.

STANDARD	RATING
<p>JOB KNOWLEDGE: Consider the extent to which the employee understands and applies the knowledge required to fulfill the duties and responsibilities of the position.</p> <p>Comments:</p>	
<p>QUALITY OF WORK: Consider the accuracy, thoroughness, neatness, and related characteristics to work produced or accomplished (disregard volume of work).</p> <p>Comments:</p>	
<p>COMMUNICATION: Consider the ability of the employee to transmit knowledge and ideas orally and/or in writing with effectiveness and clarity, relative to the requirements of the job.</p> <p>Comments:</p>	
<p>QUALITY OF WORK: Consider the extent to which the employee consistently maintains the volume of work in relation to the volume required for proficient job performance.</p> <p>Comments:</p>	
<p>ATTENDANCE: Consider employee's prompt arrival to work, number of days absent (not including FMLA leave), time spent away from job duties during the day, and time left early.</p> <p>Comments:</p>	
<p>SAFETY/GOOD HOUSEKEEPING: Consider the extent to which the employee observes and practices the safe use of equipment, wearing of safety apparel, and good housekeeping measures.</p> <p>Comments:</p>	

STANDARD	RATING
LEVEL OF REQUIRED SUPERVISION: Consider how much time and effort is required to direct and manage the employee. Comments:	
PLANNING: Consider the extent to which the supervisor takes responsibility for prudent cost control, methods development, and controlling. Comments:	
LEADERSHIP: Consider the extent to which others naturally follow the supervisor's example of direction. How well does the supervisor obtain good results from others? Comments:	

SUMMARY OF RATINGS

Job Knowledge _____ Quality of Work _____ Communication _____
Quantity of Work _____ Attendance _____ Safety/Housekeeping _____
Level of Supervision _____ Planning _____ Leadership _____
AVERAGE OVERALL RATING _____

Overall assessment of employee:

TO BE ASKED DURING EVALUATION

Is the employee suffering from any work related injury that has not been reported?

Does the employee have any complaints about harassment, wages or violations of the law?

Employee comments (Attach Additional Pages As Necessary):

Goals for the next 12 months and timetable for meeting goals:

EMPLOYEE ACKNOWLEDGMENT

I have read and discussed this completed appraisal with a supervisor, and I have received a copy. I understand that my signature indicates that I have been personally apprised of my performance. It does not, however, indicate my agreement with the appraisal. I understand that a positive performance evaluation or a raise in pay does not alter the at-will nature of the employment relationship, which can only be modified by a written agreement signed by the President of the Ranch Foundation.

Signature of Employee: _____ Date: _____

Signature of Supervisor: _____ Date: _____

Recommended Salary Increase (if any): _____

Reviewed as to form and content
by President of the Board of Directors: _____

EMPLOYEE ACTION NOTICE

Employee: _____ Date of the Violation: _____

Counseled By:

Name: _____ Position: _____

Name: _____ Position: _____

Name: _____ Position: _____

Type of Counseling (indicate whether this is the first, second, final, etc.):

- | | |
|---|--|
| <input type="checkbox"/> Verbal Warning | <input type="checkbox"/> Written Warning |
| <input type="checkbox"/> Suspension Pending | <input type="checkbox"/> Disciplinary Suspension |
| | <input type="checkbox"/> Final Warning |

It is necessary to warn you of the following: (check and give details under explanation)

- | | |
|---|--|
| <input type="checkbox"/> Absence | <input type="checkbox"/> Using abusive or vulgar language |
| <input type="checkbox"/> Tardiness | <input type="checkbox"/> Dishonesty |
| <input type="checkbox"/> Failure to call in | <input type="checkbox"/> Dissension with co-workers |
| <input type="checkbox"/> Horseplay | <input type="checkbox"/> Leaving work without permission |
| <input type="checkbox"/> Smoking in Unauthorized Areas | <input type="checkbox"/> Failure to meet job requirements |
| <input type="checkbox"/> Insubordination | <input type="checkbox"/> Willfully performing poor work |
| <input type="checkbox"/> Failure to follow instructions | <input type="checkbox"/> Unauthorized use/abuse of equipment/materials |
| <input type="checkbox"/> Falsification of records | |

☐ Specifically describe the reason for counseling:

Dated: _____ By: _____
Signature of Supervisor

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Page 28