Arizona Medical Marijuana Act - Amendments Made To Drug Testing Laws

On April 29, 2011, Governor Jan Brewer signed House Bill 2541, amending Arizona's drug testing statutes and the Arizona Medical Marijuana Act. The new law is immediately in effect and applies retroactively to April 12, 2011.

Under the new law, Arizona's drug testing statutes have been amended to expand the definition of "good faith." In addition, the new law added definitions of "impairment" and "safety-sensitive position." These definitions will apply to all types of employment-related drug situations, including the Arizona Medical Marijuana Act (which specifically prohibits employees from being impaired at work, but does not define impairment.)

The new law protects employers from litigation in several new situations, including when an employer acts on the good faith belief that an employee used or possessed any drug while at work or that an employee was impaired at work. In addition, the new law protects an employer who excludes an employee from performing a safety-sensitive position when the employer has a good faith belief that the employee is currently using any drug that could cause impairment.

Finally, the new law amends the portion of the Arizona Medical Marijuana Act that established a statewide on-line system to verify the registry identification cards that are issued to all medical marijuana patients and their designated caregivers. Under the new law, employers will also have access to this on-line verification system to verify any registry identification card that is presented to the employer by a current employee or an applicant who has received a conditional offer of employment. The new law does not address whether or not employers can, or should, request registry identification cards from employees.

In light of this new law, employers should consider reviewing their policies to include the new definitions of good faith, impairment and safety-sensitive position. Employers should also discuss with their attorneys the situations under which it would be permissible (and conversely, the situations under which it would be ill-advised) to access the medical marijuana verification system.

This Client Alert is intended to provide a brief overview about the Arizona Medical Marijuana Act's potential applicability and is for informational purposes only. No attorney-client relationship is intended or formed. Arizona ethics rules impose special requirements for attorney-client engagements involving the Arizona Medical Marijuana Act. Among other things, these include (1) disclosure whether the firm is undertaking to advise the client about federal controlled substances law and, if not, the desirability of obtaining such advice, (2) disclosure about the potential consequences if the Arizona Medical Marijuana Act is amended or invalidated in whole or part, and (3) a requirement that the lawyer make a threshold determination that the client's proposed conduct is in clear and unambiguous compliance with the Arizona Medical Marijuana Act.