



Did You Know?

John Adams believed that July 2nd was the correct date on which to celebrate the birth of American independence, and would reportedly turn down invitations to appear at July 4th events in protest. Adams and Thomas Jefferson both died on July 4, 1826--the 50th anniversary of the adoption of the Declaration of Independence.

(see <http://www.history.com/topics/holidays/july-4th>)



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It's High Noon on Medical Marijuana Issues

On Thursday, June 25, 2015, three years after Massachusetts citizens voted to allow the use of marijuana for therapeutic purposes, the state's first medical marijuana dispensary opened in Salem, Massachusetts. The Salem dispensary is the first of many dispensaries set to open across the state - 15 of the state's 35 dispensary licenses have already been conditionally approved.

As access to medical marijuana becomes a reality in Massachusetts, it is just a matter of time before employers in this state come face to face with the issue of employee medical marijuana use and workplace zero tolerance drug policies. While Massachusetts courts have not yet had an opportunity to interpret the state's 2013 Medical Marijuana Act, a recent decision by the Colorado Supreme Court has employers in Colorado and other states that allow the use of medical marijuana, breathing a sigh of relief.

In *Coats v. Dish Network*, a quadriplegic who was a registered medical marijuana user in Colorado and used medical marijuana outside of working hours, challenged his discharge under Dish Network's zero tolerance policy after he tested

positive for marijuana during a random drug test. Coats argued that his discharge was unlawful under Colorado's Lifestyle Law, which protects employee's lawful activities outside of work; the Colorado Supreme Court disagreed.

In a long awaited decision issued on June 15, 2015, the Colorado Supreme Court concluded that because marijuana use remains illegal under federal law, the employee's use under Colorado's Lifestyle Law was not a "lawful activity" for purposes of escaping discipline under the state's "lawful activities statute." The Court upheld the discharge.

The Colorado decision follows the lead of Supreme Courts in California, Washington and Oregon in rejecting job protection for medical marijuana use based on those states' laws. While not binding on Massachusetts courts, decisions such as these should have employers riding high. The "ongoing" divide between state and federal law means that although it is allowed in Massachusetts, medical marijuana remains illegal under federal law.

Amended Physical Restraint Regulations

In December, 2014, the Massachusetts Board of Elementary and Secondary Education adopted proposed amendments to the state's Physical Restraint Regulations (603 CMR 46.00). A central theme of the amended regulations is that physical restraint should only be used in an emergency and as a last resort, except when a student's behavior poses a threat of assault or imminent, serious, physical harm to self or others, and the student is not responsive to verbal directives or other less intrusive behavior interventions or strategies. As a result, the amended regulations prohibit the use of physical restraint as a standard response in an Individualized Education Program (IEP) for a student with disabilities, or any written individual behavior plan.

The amended regulations address when physical restraint is to be used, and provide a better distinction between seclusion (involuntary confinement of student alone in room or designated area) and time-out (behavior support strategy for purpose of calming student). They also mandate regular reporting requirements for analyzing and tracking the use of physical restraint in schools, and require annual refresher trainings for designated staff responsible for administering physical restraint (on top of the in-depth training already required).

Although the amended regulations are not effective until January 1, 2016, school districts should not wait to review and update current practices and procedures. The Department of Elementary and Secondary Education (DESE) is recommending that districts test policies and provide staff training this fall to ensure full implementation by the mandatory effective date. If you have questions about the new amendments or would like assistance updating your current policies and procedures, contact your CLP attorney or Melissa Murray, Esq. at mmurray@collinslabor.com.