

U.S. Pretrial Services Agency
Central District of California
Human Resources Bulletin
April 4, 2018

Use of Marijuana by Federal Employees

The Office of General Counsel has provided the following guidance in response to court inquiries regarding marijuana use by court employees:

OPM has issued guidance on the question of state decriminalization of marijuana use and whether Federal employees may use marijuana as provided for under their state's laws. See [Federal Laws and Policies Prohibiting Marijuana Use](#). OPM's guidance states that because Federal law on marijuana remains unchanged (i.e. marijuana is still categorized as a controlled substance under Schedule I of the Controlled Substance Act), Federal employees are prohibited from using/possessing marijuana regardless of their state's laws. Further, [Executive Order 12564, Drug-Free Federal Workplace](#), mandates that Federal employees refrain from illegal drug use whether on-duty or off-duty. As marijuana is still considered an "illegal drug" under Federal law, employees are further prohibited from marijuana use under Executive Order 12564. Thus, OPM guidance and Executive Order 12564 make clear that a federal employee may not use/possess marijuana for any purpose, including medicinal purposes. Note: To the extent an employee asserts a complaint for disability discrimination, the claim should fail because current illegal drug use is excluded from protection under the ADA. [42 U.S.C. 12114\(a\)](#) (explicitly excluding individuals who are currently engaging in illegal drug use from the definition of a qualified individual with disability).

Similarly, regarding suitability determinations, the legalization of marijuana by some states does not change suitability determinations. Under [Chapter 5 of the Code of Federal Regulations, Section 731.202\(b\)\(2\)](#), criminal conduct, including violation of the Controlled Substances Act, may be the basis of an unfavorable determination. However, the circumstances of the marijuana use (e.g. the nature and seriousness of the conduct, the circumstances surrounding the conduct, contributing societal conditions) may be considered under [Title 5 of the Code of Federal Regulations, Section 731.202\(c\)](#). Note: The multi-factor analysis under Title 5 of the Code of Federal Regulations, Section 731 are not mandatory in the judicial branch. However, appointing officers have been encouraged to consider the factors as an aid in making their determinations.