

**PROP 64 :
THE IMPACT OF MARIJUANA
LEGALIZATION ON OUR SCHOOLS**

California Association of
School Business Officials

WEDNESDAY, MAY 31, 2017

Webinar Presented By:
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LS Lozano Smith
ATTORNEYS AT LAW

PRESENTER INFORMATION



Lee Burdick
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Lee Burdick is Senior Counsel in Lozano Smith's Fresno office. Her practice is focused on local government, labor & employment and public agency law. She has more than 25 years of legal experience for a wide range of clients, including government, corporate and nonprofit entities. Her expertise includes research, analysis and advocacy before a variety of federal, state and local agencies and courts. Lee has represented clients in administrative proceedings before agencies and boards such as the Federal Communications Commission, the California Public Utilities Commission, the California Energy Commission, the California Department of Labor and others.

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OVERVIEW



Recreational Marijuana –
Proposition 64

District Property

Employees

Students

PROPOSITION 64



PROPOSITION 64 - ALLOWS

- Recreational use, possession and cultivation by an individual 21 and over
- Cultivation in a residence, up to 6 plants
- Sale, distribution, dispensaries and deliveries as regulated by the local jurisdiction
- Business regulation and taxes
- Changes penalties for possession, use and cultivation
- Requires jurisdictions to allow transportation of marijuana

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PROPOSITION 64 - DOESN'T ALLOW

- Cultivation, possession or use by anyone under the age of 21
- Public smoking or ingesting of marijuana
- Smoking or ingesting marijuana while driving, driving "under the influence," or possessing an "open container"
- The location of any marijuana business within 600 feet of a school, daycare or youth center
- Smoking or ingesting marijuana in, on or near a school, daycare or youth center
- Smoking marijuana in a tobacco-free zone
- Marijuana advertising directed at minors

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PROPOSITION 64 – DOESN'T CHANGE

- Employer’s ability to regulate workplace policies related to drugs/alcohol
- School’s ability to regulate and maintain a drug-free school zone
- The existence and use of medical marijuana
- The obligations of mandated reporters
- U.S. Department of Transportation regulations for bus drivers as “safety-sensitive positions”

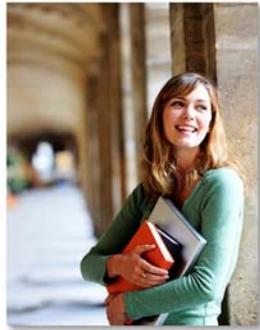


SCHOOL DISTRICTS



DISTRICT PROPERTY

PROP 64 prohibits possessing, smoking or ingesting, or cultivating marijuana *in or on the grounds* of a school, day care center or youth center where children are present.



HYPOTHETICAL

TODAY'S PERFORMANCE
"HIGH TIMES AT SMOKY BUTTE HIGH"

Cast: Mr. Goodheart, Principal
Mary Jane Bloom, Teacher
Joey Budd, Student in Senior Class
Pete Potter, Janitor
Heather Homegrown, Joey Budd's
Stepmother



HYPOTHETICAL

SCENE ONE

Our teacher, Mary Jane, finds that her entire day flows more smoothly if she can take a couple of "tokes" on her lunchbreak. Mary Jane has heard that it's now legal to smoke marijuana. As a result of this new-found freedom, Mary Jane decides to go to her car, which is located in the school parking lot, where she pulls out a joint and lights up.

ISSUES

- Is the parking lot school property?
- Are students "present"?
- Is it OK to possess, smoke or ingest on school grounds when children *aren't* present?
- Can we declare schools off-limits at all times because children *could* be present?
- What about other District and COE property where children aren't allowed, like school bus yards?



HYPOTHETICAL

SCENE TWO

Across town, District janitor Pete Potter cleans up the school-bus yard, located miles away from a school and where no children are allowed, for safety reasons. He enjoys vaping marijuana during his afternoon break.

ISSUES

- Is it “school property”?
- What about a “Tobacco-Free School Policy”?
- Can it be protected under a “Drug-Free Workplace Policy”?



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OTHER CONCERNS

Be sure to check your local ordinances regarding possession and use around your schools.

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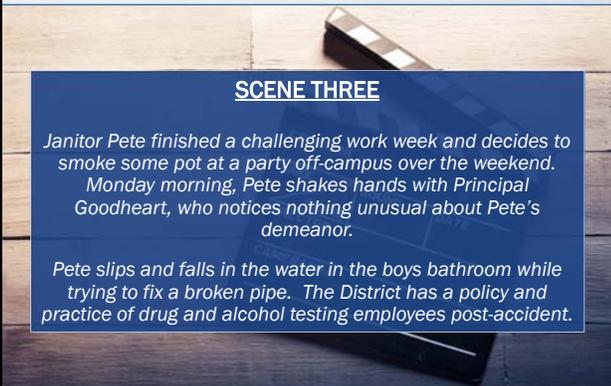


EMPLOYEES

PROP 64 does not affect an employer's ability to maintain a drug- and alcohol-free workplace.



HYPOTHETICAL



SCENE THREE

Janitor Pete finished a challenging work week and decides to smoke some pot at a party off-campus over the weekend. Monday morning, Pete shakes hands with Principal Goodheart, who notices nothing unusual about Pete's demeanor.

Pete slips and falls in the water in the boys bathroom while trying to fix a broken pipe. The District has a policy and practice of drug and alcohol testing employees post-accident.

EMPLOYEES

1. Can the District drug-test Pete to see if he was “under the influence” when he fell?
2. Is sending Janitor Pete for a drug test good enough to show he was impaired at work?

HYPOTHETICAL

SCENE FOUR

Mary Jane was at the same party as Pete, where people were smoking and ingesting marijuana. Principal Goodheart has heard about this party and believes Mary Jane was probably there, although this fact has not been confirmed. Monday morning, Mary Jane calls in and says she's going to be late. When she shows up, she appears unusually disheveled, is shuffling her feet and slurring her words. Her eyes are half-closed and she won't look Principal Goodheart in the eye.

ISSUES

1. Can Principal Goodheart send Mary Jane for a drug test? Should he?
2. Can Principal Goodheart discipline Mary Jane?

EMPLOYEES

GENERAL RULE

You are always better off disciplining based on conduct in the workplace.

Don't overlook the objective evidence of conduct v. results of drug-testing.



HYPOTHETICAL

SCENE FIVE

Mary Jane had a busy weekend. In addition to hearing about the party, Heather Homegrown, Joey Budd's Stepmom, approached Principal Goodheart first thing Monday and told him that Joey saw his teacher, Mary Jane, smoking a joint and passing it among her friends at a rock concert.

ISSUES

- Can you discipline her for her off-duty drug use if it doesn't affect her ability to perform the job?



HYPOTHETICAL

SCENE SIX

Principal Goodheart is finally fed-up with Mary Jane's pot smoking. He brings her into his office to discuss it, and she informs him that she has a doctor's recommendation for medical marijuana and wants a reasonable accommodation.

EMPLOYEES

Prop 64 specifically does not require a public nor a private employer to “accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace....”

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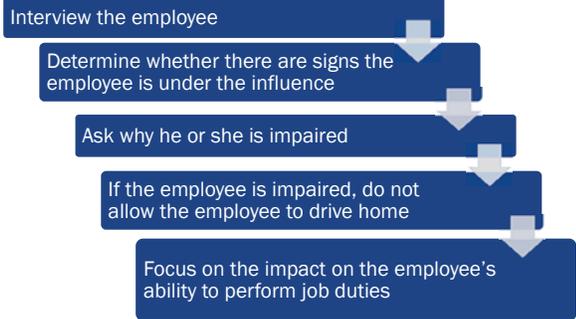
UNION ISSUES

- Negotiation of Policy
- Proof of “Under the Influence”
- Changes to Drug Testing
- Discipline Issues



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Handling Employee Suspected of Being Under the Influence



SCHOOL DISTRICTS



STUDENTS

STUDENTS

GENERAL RULE

Prop 64 specifically prohibits those under the age of 21 from smoking, possessing or cultivating marijuana.



HYPOTHETICAL

SCENE SEVEN

Joey Budd comes into the school office smelling like a cloud of weed. Joey denies that he's been smoking pot or that he has any on his person. Principal Goodheart proposes to suspend him and calls Joey's stepmom, Heather Homegrown, to come to school to discuss it.

ISSUES

Can you discipline Joey?

HYPOTHETICAL

SCENE EIGHT

Once Heather Homegrown gets there to discuss Joey's proposed suspension, she reminds Principal Goodheart that Joey is enrolled in Special Education and has an IEP. She also informs him that Joey has a doctor's recommendation for medical marijuana for his ADHD, and argues that the District is legally obligated to reasonably accommodate Joey for being under the influence at school.

STUDENTS

Prop 64 does not substantively change the medical marijuana laws.

People under 21 years old can secure a recommendation from a doctor for medical marijuana use, but are still prohibited from using, possessing or being under the influence of marijuana at school.



TAKE-AWAYS



PROPOSITION 64



- Districts may see increased incidents of marijuana possession and use on campuses, so it's important to stay on top of trends
- Districts should review policies to ensure all District property is declared and protected Drug- and Alcohol-Free Zones
- Should also review and update discipline policies and regulations for personnel and students
- Should consider "reasonable suspicion" training for administrative personnel



QUESTIONS



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