



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Tuesday, May 26, 2015

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: Katherine Archuleta Director

Subject: Federal Laws and Policies Prohibiting Marijuana Use

Recently, several states and the District of Columbia have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use. These changes to state law have raised questions about whether Federal employees in these jurisdictions may use marijuana as provided for in state law. As the Director of the U.S. Office of Personnel Management (OPM) and Suitability Executive Agent, I am responsible for issuing standards and guidance to agencies to ensure that appropriate suitability determinations are made for positions covered by the suitability regulations in title 5, Code of Federal Regulations, part 731 (5 C.F.R. part 731). I am also responsible for issuing guidance to agencies on maintaining a Drug-Free Federal Workplace. The purpose of this memorandum is to set out guidance in these areas.

Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substance Act. Thus knowing or intentional marijuana possession is illegal, even if an individual has no intent to manufacture, distribute, or dispense marijuana. In addition, Executive Order 12564, Drug-Free Federal Workplace, mandates that (a) Federal employees are required to refrain from the use of illegal drugs; (b) the use of illegal drugs by Federal employees, whether on or off duty, is contrary to the efficiency of the service; and (c) persons who use illegal drugs are not suitable for Federal employment. The Executive Order emphasizes, however, that discipline is not required for employees who voluntarily seek counseling or rehabilitation and thereafter refrain from using illegal drugs.

Involvement with marijuana may be considered when agencies make suitability determinations for covered positions under 5 C.F.R. part 731. Drug involvement can raise questions about an individual's reliability, judgment, and trustworthiness or ability or willingness to comply with laws, rules, and regulations, thus indicating his or her employment might not promote the efficiency or protect the integrity of the service. However, the individual's conduct must be evaluated on a case-by-case basis.

Under 5 C.F.R. 731.202(b)(2), criminal conduct — including a violation of the Controlled Substances Act — may be the basis for an unfavorable suitability determination. In determining whether employment of an individual with a history of criminal conduct related to that individual's possession of marijuana will protect the integrity or promote the efficiency of the service, the following considerations under 5 CFR 731.202(c) will always be relevant and should

be taken into account: (i) the nature and seriousness of the conduct, (ii) the circumstances surrounding the conduct, and (iii) contributing societal conditions.

Under 5 C.F.R. 731.202(b)(6), illegal use of narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation may also be the basis for an unfavorable suitability determination. However, the focus of this factor is not on whether the individual has been involved in conduct in violation of the Controlled Substances Act, i.e., possession, manufacturing, distributing or dispensing drugs or controlled substances. Rather, an unfavorable suitability determination citing this factor must establish that the individual illegally used the drug and has not been substantially rehabilitated from his or her use.

Heads of agencies are expected to advise their workforce that legislative changes by some states and the District of Columbia do not alter Federal law, existing suitability criteria, or Executive Branch policies regarding marijuana. An individual's disregard of Federal law pertaining to marijuana remains adjudicatively relevant to suitability determinations and relevant for disciplinary actions. Similar guidance regarding national security guidelines was provided by the Security Executive Agent to agency heads on October 25, 2014. This guidance is attached for your information.

Lastly, it is important to note that it is also the policy of the Federal Government to offer appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with drug problems. OPM is responsible for developing and maintaining guidance and policy for agencies related to these programs, in cooperation with the Secretary of Health and Human Services and other relevant agencies. Federal agencies must establish and maintain such programs to assist employees with these problems, consistent with 5 C.F.R. 792.105.

Agencies may direct questions pertaining to this memorandum as follows:

- Suitability Regulations: employ@opm.gov
- Misconduct and Disciplinary Actions: plr@opm.gov
- Drug-Free Federal Workplace Guidance: worklife@opm.gov
- Background Investigations Policy: FISPolicy@opm.gov

Employees should contact their agency human resources offices for assistance.

cc: Chief Human Capital Officers, and Human Resources Directors