

Fair Housing and Medical Marijuana in OREGON STATE:

Life after the Emerald Steele Employment Case

On April 14, 2010 the Oregon Supreme Court decided the case of Emerald Steel Fabricators v. Bureau of Labor and Industries (BOLI). The Court held that an employer could terminate an employee who used (outside of work) medical marijuana, even though that employee followed all the rules for using medical marijuana, and used it to help with his disability. On November 4th BOLI released the policy statement below stating they would no longer accept medical marijuana cases for investigation, including housing cases.

In the aftermath of the Emerald Steel decision, it is clear that medical marijuana use is not criminal under state law; that is, one will not be arrested if they use it (in compliance with the state's program restrictions). However, no one (employer or housing provider) has to allow medical marijuana users to use it (at work or in housing). This is a striking decision that clarifies many of the questions, confusion, and consternation within Oregon's housing industry. It should be noted that Washington state's Supreme Court has not issued such a decision on its medical marijuana law, so housing providers there may wish to continue accommodating people with disabilities who use medical marijuana and comply with the state's program rules.

It should be noted that this continues, obviously, to be a developing area of law. You are advised to not only watch our newsletter at www.FHCO.org/newsletter.htm and www.FHCO.org/breaking_news.htm for further developments but to seek competent legal advice before taking any action.

Fair Housing and Medical Marijuana in WASHINGTON STATE

NOTE: The information below is still relevant for Washington state residents; however, the 11/04/2010 statement by Oregon's Bureau of Labor & Industry (BOLI) nullifies the information for Oregonians.

The Fair Housing Act defines disability as a physical or mental condition that substantially impairs a major life activity such as seeing, hearing, thinking, walking, breathing, self-care, etc. This includes an expansive list of chronic diseases and conditions. You should also know that anyone with a disability has the right to ask a housing provider for a reasonable modification or accommodation and, for some with severe pain or chronic conditions, medicinal use of marijuana is the only treatment that seems to help.

...So, a ban on illegal drug use and a no-smoking rule are each perfectly fine unless and until an individual with a disability has been legally prescribed medical marijuana and asks for an accommodation to use it. As with any other reasonable accommodation or modification, the housing provider has the right to verification but must consider every request. HUD only allows for denial when what's asked for alters the housing provider's job description; poses a direct threat; constitutes an administrative burden and is too costly.

If you have a medical marijuana user on your property, you may not charge them higher fees or deposits. That being said, if damage is caused (i.e.: moisture damage, electrical issues, etc.) the resident is, in fact, responsible for it just as a resident would be if his / her service animal gnawed on woodwork in the unit or damaged carpeting. The point is you may not legally assume there will be problems or damage unless or until it actually happens. This seems like a good reason for landlords to have a policy of routinely inspecting all of their units in order to be in communication with residents and catch to any issues early on.

**For a full copy of either article, as well as
additional, related resources, visit:
http://FHCO.org/med_marijuana.htm**

OREGON STATE continued:

As with all legal matters, a few uncertainties still remain. We hope the following Q&As will provide some assistance in this new environment.

Q: Do I have to rent to medical marijuana (MM) users?

A: No; not after the Oregon Supreme Court's decision and BOLI's 11/04/10 announcement.

Q: Do I have to grant a reasonable accommodation (RA) to MM users?

A: No; not after the Oregon Supreme Court's decision and BOLI's 11/04/10 announcement.

Q: If I deny such a RA to MM users, can they sue me or file a fair housing complaint against me for that reason?

A: MM applicants have not been able to file complaints with HUD (as a federal agency, HUD doesn't recognize MM as legal activity). BOLI is the fair housing enforcement agency that would have heard such complaints within Oregon; they clearly state that they will not entertain such complaints going forward. A lawsuit is always possible, but the outcome would be far from guaranteed for a MM user who tried to buck the current precedent set by the employment case and BOLI's statement.

Q: Can I evict a resident who I previously granted such an accommodation to based solely on the fact they use MM?

A: This may or may not be problematic. You're advised to seek competent legal advice before proceeding.

Q: If I try to evict MM users will FED court judges rule in my favor?

A: This is not clear. The impact of the Emerald Steel case on Oregon's Landlord Tenant law is unknown.

Q: Will I get in trouble with the law if I do rent to MM users and allow them to grow / use on the property within the state's program rules?

A: No; under state law medicinal use of marijuana remains legal activity so, if you wish to allow it, you should not get in trouble for doing so.

Q: If I choose to allow MM use on my property, can I charge security deposits, higher cleaning deposits, etc. to those residents?

A: Yes; with the Oregon Supreme Court's decision and BOLI's announcement this would now be fine.

WASHINGTON STATE continued:

If an individual in any way violates the state's medical marijuana program rules (where it's used, quantities allowed, selling or distributing, etc.) it then becomes, essentially, illegal activity. At which point, a landlord would be within his / her rights to sanction the individual accordingly.

I've had many-a-landlord ask, "Why can't the resident simply take it in another form rather than smoking it!" Let me be clear, under fair housing laws housing providers have no business interfering with an individual's treatment plan. Such business is strictly between him / her and their medical provider. This is true whether you'd prefer the individual took a marijuana pill rather than smoking it or if you question what good a campaign animal might do for an individual who doesn't appear to you to be disabled. In terms of medical marijuana, alternate forms are not always an option – for some it makes them sick to their stomach, for others it simply isn't effective at easing pain.

You should know that you are not required to accommodate medical marijuana growers who legally grow crops under the state's medical marijuana program for the use of other patients.

In summary, be sure you're getting advice from appropriate sources for specific issues. For non-approved use of marijuana (ie: not medical marijuana; AKA illegal drug use) contact your local law enforcement agency. For questions about your state's medical marijuana program, contact the Dept. of Human Services in Oregon (<http://www.oregon.gov/DHS/ph/ommp/>) or Washington's State Dept. of Health (<http://www.doh.wa.gov/hsqa/medical-marijuana/>). For additional information on medical marijuana from a fair housing-perspective visit www.FHCO.org/breaking_news.htm and search for "marijuana" to find a Dept. of Justice memo on the subject. You may also want to check out www.FHCO.org/disability.htm. For any fair housing-related questions, contact our Fair Housing Hotline (800/424-3247 Ext. 2) or an attorney well versed in these federal, state, and local laws.

As I've said many times, we pride ourselves on the strong working relationships we have with housing providers and their trade associations across our service area. We strive to be a resource to you. You'll find a great deal of additional information just for housing providers at www.FHCO.org/hs_provider_info.htm.

**Still have Qs? Visit <http://FHCO.org>
or Call the Fair Housing Hotline
at 800/424-3247 Ext. 2**

