

# Navigating the Haze of Marijuana in the Workplace

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# Marijuana Laws

- Constantly changing
- Inconsistent
- Impacts:
  - Company drug testing policies
  - How drug testing programs are administered
  - How results are handled



# Marijuana Today: State Laws

- 8 states + D.C. have passed recreational marijuana
  - Laws regulate marijuana like tobacco and alcohol, allows adults 21+ to use and possess marijuana
  - All states also have comprehensive medical marijuana laws
- 29 states + D.C. + 2 U.S. territories (Guam and Puerto Rico) have comprehensive medical marijuana laws
- Additional 15 states have low THC/high CBD laws
  - Laws allow use of low THC, high CBD products in limited situations or as legal defense

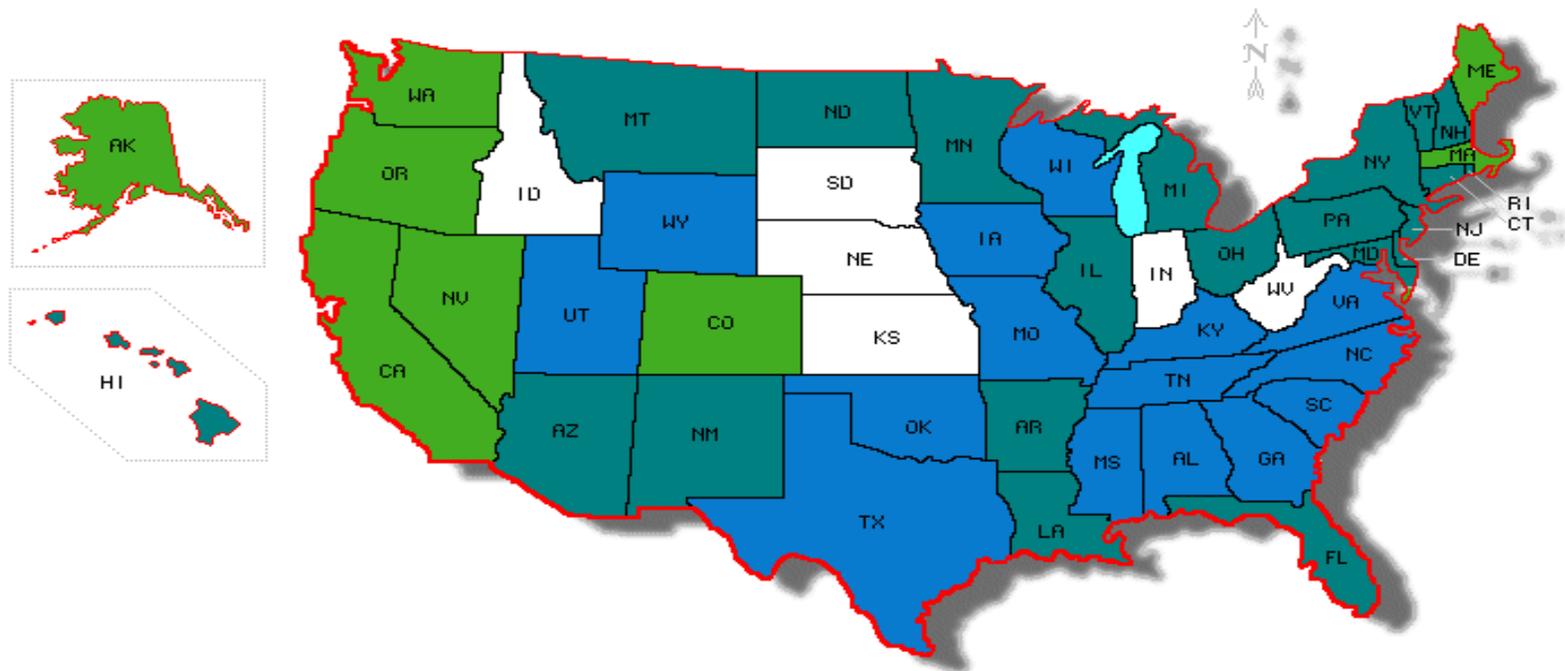
# Medical Marijuana States

- Alaska (1998)
- Arizona (2010)
- Arkansas (2016)
- California (1996)
- Colorado (2000)
- Connecticut (2012)
- Delaware (2011)
- Florida (2016)
- Hawaii (2000)
- Illinois (2013)
- Louisiana (2015/2016)
- Maine (1999)
- Maryland (2014)
- Massachusetts (2012)
- Michigan (2008)
- Minnesota (2014)
- Montana (2004)
- Nevada (2000)
- New Hampshire (2013)
- New Jersey (2010)
- New Mexico (2007)
- New York (2014)
- North Dakota (2016)
- Ohio (2016)
- Oregon (1998)
- Pennsylvania (2016)
- Rhode Island (2006)
- Vermont (2004)
- Washington (1998)
- Washington, D.C. (2010)

# Low THC/High CBD States

- Alabama (2014)
  - Georgia (2015)
  - Iowa (2015)
  - Kentucky (2014)
  - Mississippi (2014)
  - Missouri (2014)
  - North Carolina (2014)
  - Oklahoma (2015)
  - South Carolina (2014)
  - Tennessee (2014)
  - Texas (2015)
  - Utah (2014)
  - Virginia (2015)
  - Wisconsin (2013)
  - Wyoming (2015)
- All laws passed since 2014 in mostly southern states
    - Movement began after CNN aired documentary, *Weed*, with stories of kids with severe epilepsy using “Charlotte’s Web Oil” in 2013
  - Laws contain varying levels of permitted THC; no consensus on ratio

# Marijuana Today: Medical, Recreational, & CBD States



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# Marijuana Today: Federal Law- Still Prohibited

- While states are passing laws allowing medical and recreational marijuana:
  - Marijuana is still illegal under federal law
  - Marijuana is still classified as Schedule I drug by the DEA
    - No currently accepted medical use in treatment, lack of accepted safety for use under medical supervision, and high potential for abuse
- Medical marijuana is not a legitimate medical explanation under Department of Transportation (DOT) drug testing regulations
  - November 2015 DOT Notice re-affirming issue



# Marijuana Today: Federal Law

- 2013 DOJ Memo: Guidance on marijuana enforcement- DOJ will not intervene with state medical marijuana laws
- 2014: Medical Marijuana Protection Provision in Spending Bill
  - Prohibits DOJ/DEA from using resources to prevent states from implementing medical marijuana laws; previously blocked for 10 years; renewed June 2015 and December 2016
- May 2015: 1<sup>st</sup> time Senate Committee voted in favor of pro-marijuana amendment
- June 2015: Federal Budget plan on D.C. recreational Initiative 71- prohibited legal sales until 2017 but did not roll back
- July 2015: 1<sup>st</sup> time Senate Panel voted in favor of recreational marijuana in banking
- Introduction of CARERS Act seeking to reschedule marijuana

# Marijuana Today: Federal Law

- February 2015: Surgeon General notes preliminary data showing for certain medical conditions and symptoms that “marijuana can be helpful”
- NIDA publications citing studies with positive effects
- Increased research and growth of plants for federal research
- June 2015: eliminated additional requirement of Public Health Service Review for non-federal research
- April 2016: 1<sup>st</sup> approved research study on effectiveness of marijuana for PTSD in veterans

# Marijuana Today : Federal Law

- August 11, 2016: DEA denied petition to reschedule marijuana- research does not support reclassification
  - Relied on FDA/HHS supporting documentation; found insufficient data, lack of information; too many variables (potency, methods of consumptions, etc.)
  - BUT, DEA made policy change to remove restrictions and allow more research
- January 2017: new administration

# 2016 Marijuana Legislation

## Recreational Marijuana

- Introduced: at least 18 states
- Passed: 4 states; all by voter initiative
  - California
  - Maine (subject to recount)
  - Massachusetts
  - Nevada

## Medical Marijuana

- Introduced: at least 19 states
- Passed: 5 states; 3 by voter initiative
  - Arkansas
  - Florida
  - North Dakota
  - Ohio
  - Pennsylvania

# Recreational Marijuana Laws

- Impairment/DUI
  - Most states prohibit driving under the influence, but no guidance
  - Colorado and Washington have per se limits of 5 ng/mL of THC in blood
- Current trend is explicitly providing **NO** employee protections
  - 3 states silent on employment protections; but guidance provides no protections
    - Colorado, Oregon, Washington
  - 4 states explicitly provide no employment protections
    - Alaska, California, Massachusetts, Nevada
  - 1 state appears to provide employment protections for off-duty use
    - Maine

# Recreational Marijuana Laws

## California: Proposition 64 (2016)

- Passed November 8, 2016; effective November 9, 2016
  - Will be regulated using same framework and by same agencies as medical marijuana
  - Amendments also address medical marijuana; new privacy provisions
- Explicitly provides NO employment protections
  - “Nothing in section 11362.1 shall be construed or interpreted to amend, repeal, affect, restrict, or preempt: The rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the work place, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law.” (§11362.45(f))
- Allocates money to develop DUI protocols

# Recreational Marijuana Laws

## Massachusetts: Question 4 (2016)

- Passed November 8, 2016; effective December 15, 2016
- Explicitly provides NO employment protections
  - “This chapter shall not require an employer to permit or accommodate conduct otherwise allowed by this chapter in the workplace and shall not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees.” (Section 2(e))

## Nevada: Question 2 (2016)

- Passed November 8, 2016; effective January 1, 2017
  - Dep’t of Taxation must adopt regulations w/in 12 months of effective date
- Explicitly provides NO employment protections
  - “Sections 1 to 18 do not prohibit . . . A public or private employer from maintaining, enacting, and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under sections 1 to 18, inclusive, of this act” (Sec. 2(a))

# Recreational Marijuana Laws

## Maine: Question 1 (2016)

- Passed November 8, 2016; effective 30 days after Governor calls election
  - Dep't of Agriculture, Conservation and Forestry must adopt rules w/in 9 months
- Currently subject to recount
- Does not mention driving under the influence or impairment
- Appears to provide explicit employment protections for off-duty use
  - “Employment policies. This chapter may not be construed to require an employer to permit or accommodate the use, consumption, possession, trade, display, transportation, sale or growing of cannabis in the workplace. This chapter does not affect the ability of employers to enact and enforce workplace policies restricting the use of marijuana by employees or to discipline employees who are under the influence of marijuana in the workplace.” (§2454(2))
  - “School, employer or landlord may not discriminate. A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person 21 years of age or older solely for that person’s consuming marijuana outside of the school’s, employer’s or landlord’s property.” (§2454(3))

# Recreational Marijuana Laws

## Alaska (2014)

- Explicitly provides NO employment protections (17.38.120)
  - Not intended to require employer to permit or accommodate use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in workplace or “to affect the ability of employers to have policies restricting the use of marijuana by employees”

## Colorado (2012)

- Law silent on employment protections
- CO State Web Portal-Laws about Marijuana Use: “Despite legalization, employers can still test for marijuana and make employment decisions based on drug test results”
- *Coates v. Dish* (Colo. 2015)

## Oregon (2014)

- Law silent on employment protections
- Guidance in Oregon OLCC FAQ Sheet: Measure does not affect existing employment law and “employers who require drug testing can continue to do so”

## Washington (2012)

- Law silent on employment protections
- Guidance in Washington State Liquor and Cannabis FAQ: “It is our understanding that employers may still conduct drug testing at their discretion”

# Medical Marijuana Laws: State Law Inconsistencies

- Medical marijuana programs vary from state to state in almost every aspect
  - Possession Limits
  - Distribution
  - Methods of ingestion
  - Requirements for qualifications to possess medical marijuana card
    - Standards for physician evaluations; Qualifying Conditions
  - Patient/caregiver registry/cards
  - Civil Protections and Employment Protections
    - Degree of protections

# Medical Marijuana Laws: Current Trends

- Limiting methods of ingestion
- Adding PTSD and chronic pain as qualifying conditions
- Providing explicit employee protections
  - Employment protections vary; employer may have duty to accommodate
    - Some states have explicit protections against discrimination
    - Courts that have addressed employment protections generally find no protections but those cases have been in states with no explicit protections and based on classification of marijuana as illegal under federal law
  - Currently, there are no restrictions on testing for marijuana
  - NO law requires accommodating on-duty drug use in the workplace
  - NO law prohibits action if employee working under the influence of marijuana

# Arkansas

- Passed November 8, 2016; effective November 9, 2016
  - DOH to adopt rules within 120 days of effective date
- Contains Explicit Employment Protections
  - “qualifying patients . . . shall not be subject to criminal or civil penalties or other forms of discrimination for engaging in or assisting with the patients’ medical use of marijuana”
  - “A qualifying patient or designated caregiver in actual possession of a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including without limitation a civil penalty or disciplinary action by a business, occupational, or professional licensing board or bureau, for the medical use of marijuana in accordance with this amendment if the qualifying patient or designated caregiver possesses not more than two and one-half ounces (2 ½ oz.) of usable marijuana.” (§3(a))
  - “employer shall not discriminate . . . or otherwise penalize an individual, based upon the individual’s past or present status as a qualifying patient or designated caregiver” (§3(f)(3))
- Not required to accommodate ingestion “in a workplace or an employee working while under the influence of marijuana” (§ 6(b)(2))

# Florida

- Passed November 8, 2016; effective first Tuesday after the First Monday in January
  - DOH has 6 months after effective date to issue regulations
  - Must issue patient and caregiver ID cards no later than 9 months after effective date
- Extent of employment protections unclear
  - “The medical use of marijuana by a qualifying patient or caregiver in compliance with this section is not subject to criminal or civil liability or sanctions under Florida law.” (Article X, Section 29(a)(1))
  - “Nothing in this section shall require any accommodation of any on-site medical use of marijuana in any . . . place of . . . employment, or of smoking medical marijuana in any public place.” (Article X, Section 29(c)(6))



# North Dakota



- Passed November 8, 2016; effective within 30 days
- Extent of employment protections unclear
  - Participation in medical marijuana program by qualified patient or primary caregiver does not relieve patient or caregiver from:
    - (1) “criminal prosecution or civil penalties for activities not authorized in this rule and Act;” or
    - (3) “criminal prosecution or civil penalty for possession, distribution, or transfers of marijuana or use of marijuana . . . in the workplace of the qualified patient’s or primary caregiver’s employment” (§19-24-09. 7(a)(3)(c))
  - No other explicit discrimination provisions
- Broad off-duty “lawful activities” statute similar to Colorado (N.D. Cent. Code 14-02/4-03 (2003))

# Ohio



- Effective September 6, 2016
- Explicitly provides NO employee protections
  - Employers have right to establish and enforce zero-tolerance drug testing policies and law does not give employees right to sue employer for taking action related to use of medical marijuana
  - Not required to permit/accommodate employee's use, possession, distribution of medical marijuana; can terminate/refuse to hire
- Unemployment Benefits
  - Employee may be deemed ineligible for benefits if under the influence of marijuana at time of injury and use was cause of injury
- Workers' Compensation
  - Employer has "just cause" to terminate for use of medical marijuana in violation of employer's drug policy

# Pennsylvania

- Signed by Governor April 17, 2016
- Smoking Prohibited
- Appears to provide explicit Employment Protections
  - May not discharge, threaten, refuse to hire, discriminate, or retaliate against employee solely on basis of status to use medical marijuana
  - Not required to accommodate use on property or place of employment
  - May discipline employee under the influence in workplace or for working under the influence when conduct falls below standard of care normally accepted for that position
    - Does not define under the influence or standard of care
    - Silent on whether employer can rely on positive test for adverse action alone or as evidence of impairment- appears to require contemporaneous documentation of characteristics of physical impairment for adverse action
  - Includes specific identification for some safety sensitive functions that cannot be performed with more than 10 ng/mL of active THC in blood

# Medical Marijuana Laws: Employee Protections

## Biggest Issue for Most Employers

### 1. States Explicitly Finding No Employee Protection

- Statute or case law has found no employee protection

### 2. States with Explicit Employee Protection

- Newer laws provide specific protections for employees for various reasons related to medical marijuana
- States still prohibit use at job site or while working

### 3. States with Likely No employee Protection

- Law appears to only provide criminal protections
- Departments of Health or other case law find no protections

### 4. States with Unclear Protection

- Law silent
- No current guidance



# States with No Employee Protection

- California
- Colorado
- Michigan
- Montana
- Ohio (2016)
- Oregon
- Washington



Either statute explicitly provides no protections or statute silent and state has case law that explicitly found no employee protection under each states' respective medical marijuana act

# States with No Employee Protection

## California (1996)

- Only provides Criminal Protections; no employment protections
- Employer not required to accommodate by statute
- California Supreme Court found Act provided no protection
  - *Ross v. Ragingwire Telecommunications, Inc.*, 174 P.3d 200 (Cal. 2008)



## Colorado (2000)

- No Employment protections
- Broad off-duty use statute providing discriminatory/unfair employment practices to terminate employee engaging in lawful activities off premises during non-working hours
- Colorado Supreme Court: employee's off-duty marijuana use not "lawful activity" protected by statute because illegal under Federal law
  - *Coats v. Dish Network, LLC*, (Colo. 2015)

# States with No Employee Protection

## Michigan (2008)

- No statutory employment protections
- 6<sup>th</sup> Circuit held Act did not regulate private employment; no state law decision but no disapproval of case
  - *Casias v. Wal-Mart Stores, Inc.*, 695 F.3d 428 (6th Cir. Mich. 2012)
- Impairment and DUI
  - *People v. Koon*, 494 Mich. 1, 3 (Mich. 2013): Act allows person to drive with indications of marijuana in system but not otherwise under influence; under influence not defined

## Montana (2004)

- Statute explicitly provides no employment protections:
  - Employer can include contract provision prohibiting use as condition of employment; Act does not provide cause of action for wrongful discharge/discrimination
- MT Supreme Court upheld discharge of employee for positive marijuana test
  - *Johnson v. Columbia Falls Aluminum Co.*, 350 Mont. 562 (2009) (unpublished)
- Under the Influence/DUI: per se limit 5 ng/mL THC in blood

# States with No Employee Protection

## Oregon (1998)



- No Employment Protections
- Oregon Supreme Court found Act provided no protection to employees
  - *Emerald Steel Fabricators, Inc., v. Bureau of Labor and Indus.*, 230 P.3d 518 (Or. 2010)

## Washington (1998)

- Statute provides protections for criminal and civil consequences
- Washington Supreme Court held Act provided does not provide a cause of action for wrongful termination based on authorized medical marijuana use
  - *Roe v. Teletech Customer Care Mgmt., LLC*, 257 P.3d 586 (Wash. 2011)
- *Swaw v. Safeway, Inc.*, No. C15-939 (W.D. Wash. Nov. 20, 2015): no duty to accommodate medical marijuana in drug-free workplaces under Washington law even when use is outside workplace

# States with Explicit Employee Protections

- Arizona
- Arkansas (2016)
- Connecticut
- Delaware
- Illinois
- Maine
- Minnesota
- Nevada
- New York
- Pennsylvania (2016)
- Rhode Island



Statutes have explicit language (anti-discrimination or reasonable accommodation provisions) providing varying levels of protection

# States with Explicit Employee Protections

- Anti-discrimination provisions prohibit adverse action against employees based solely on participation in medical marijuana program (patients/caregivers)
- Some statutes provide positive drug test cannot automatically be grounds for refusal to hire or other adverse employment action
  - Arizona
  - Delaware
  - Minnesota
- Some provisions include explicit disability accommodation language
  - Nevada
  - New York
- Several states require a showing of impairment before taking adverse employment action
- None have been tested in court yet

# Explicit Employee Protections: Arizona

- Prohibits discrimination based upon:
  - Cardholder status; or
  - Patient’s positive drug test for marijuana
    - **Except:** if patient used, possessed, or was impaired by marijuana on premises or during work hours
- Cardholder may not use, possess, be impaired in workplace or during hours of employment
- Employer not prohibited from disciplining employee for ingesting in workplace or working under the influence
  - Not considered “under the influence” solely because of the presence of metabolites/components that appear in insufficient concentration to cause impairment (A.R.S. § 36-2814 (2015))
- Verification system for employers
  - Registry Card System allows verification for pre-employment applicants and current employees

# Explicit Employee Protections: Connecticut

- Prohibits discrimination solely on basis of person's status as qualifying patient or primary caregiver
  - Does not restrict employer's ability to prohibit use of intoxicating substances during work hours or discipline an employee for being under the influence during work hours
- CT Supreme Court held public policy of Connecticut does not require termination of state employee for smoking marijuana during work hours
  - *State of Conn. v. Conn. Employee's Union Independent* (SC 19590) (Aug. 30, 2016)
    - Maintenance worker at University of Connecticut Health Center terminated for violation of drug and alcohol testing policy and smoke-free workplace policy after observed smoking marijuana in state van, admitted smoking
    - Arbitrator found misconduct but found termination too harsh because policy permitted but did not mandate termination; trial court vacated on public policy grounds
    - CT Supreme court held public policy did not mandate termination

# Explicit Employee Protections: Delaware

- Prohibits discrimination based upon:
  - Cardholder status (patients and caregivers) or
  - Patient's positive drug test for marijuana
    - **Except:** if patient used, possessed, or was impaired by marijuana on premises or during work hours
- Employer not required to allow ingestion of marijuana in workplace or allow employee to work while under the influence
  - Registered qualifying patient not considered under the influence solely because of presence of metabolites or components of marijuana



# Explicit Employee Protections: Illinois

- Prohibits penalizing a person solely for their status as registered qualifying patient or caregiver
- Potential drug testing protection:
  - Nothing limits employer’s ability to discipline employee for failing a drug test if “*failing to do so would put the employer in violation of federal law or cause it to lose a federal contract or funding*” (410 ILCS 130/50(d))
- Does NOT prohibit employer from:
  - Enforcing drug testing policy, zero-tolerance policy, or a drug free workplace if policy applied in nondiscriminatory manner
  - Adopting reasonable regulations for consumption, storage, or time keeping for patients related to use of medical marijuana
  - Disciplining employee for violating workplace drug policy
- Impairment Guidelines
  - Provides description of when employee considered impaired
  - Employers can take actions based on “good faith” beliefs about employee impairment but must give employee reasonable opportunity to contest basis

# Explicit Employee Protections: Maine

- Status Protection: may not refuse to employ or penalize person solely for their status as a qualifying patient or primary caregiver
- Exceptions:
  - Not required to accommodate ingestion in any workplace
  - Not required to permit employee to work under the influence



# Explicit Employee Protections: Minnesota

- Prohibits discrimination based upon:
  - Patient status or
  - Patient's positive drug test for marijuana
    - **Except:** if patient used, possessed, or was impaired by marijuana on premises or during work hours
- If employee/applicant tests positive for drugs, employees may present verification of enrollment in patient registry as part of explanation for the results prior to any adverse employment action
- Broad off-duty use statute that could be read to include marijuana



# Explicit Employee Protections: Nevada

- Previous law provided only criminal protection; Effective April 1, 2014: Employer must attempt to make reasonable accommodations for employee with valid registry card if reasonable accommodation would not:
  - Pose threat of harm/danger to persons or property;
  - Impose undue hardship on employer; OR
  - Prohibit employee from fulfilling any/all of their job responsibilities

- **Exceptions**

- Do not have to allow use in the workplace (453A.800(2))
- Do not have to modify job or working conditions if based upon reasonable business purpose (453A.800(2))

- Broad off-duty use statute that could be read to include marijuana



# Explicit Employee Protections: New York

- Implemented January 2016
- Patients and caregivers shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau solely for certified medical use or for any other action/conduct in accordance with act
- Certified patients deemed to have a “disability” under New York Human Rights Law
- Employer may enforce policy of prohibiting employee from performing employment duties while impaired by controlled substance

# Explicit Employee Protections: Rhode Island

- Prohibits refusing to employ or penalizing person solely for their status as a cardholder
- Employer not required to accommodate medical use in the workplace
- Patient not considered under the influence solely for having marijuana metabolites in system



# States Likely Providing No Employee Protections

- Alaska
- Hawaii
- Maryland
- Massachusetts
- New Hampshire
- New Jersey
- New Mexico
- Vermont
- Washington, D.C.



These States' Medical Marijuana Laws are silent as to employee protections and generally only provide criminal protections

# Likely No Employee Protections

## Alaska (1998)

- No statutory employment protections
- Not required to accommodate use in workplace (§ 17.37.040(d)(1))
- Alaska DOH silent on issue

## Hawaii (2000)

- Silent on employment protections; prohibits use/possession at place of employment
  - Amended 2015 to prohibit discrimination against patients and caregivers by schools, landlords, and courts regarding medical care and parental rights
- DOH FAQ on employment drug testing: prohibits use in workplace but silent on employer's rights and duties
- 2015/2016: introduced legislation to provide explicit employment protections

# Likely No Employee Protections

## Maryland (2014)

- DOH FAQ: “Maryland law does not prevent an employer from testing for use of cannabis (for any reason) or taking action against an employee who tests positive for use of cannabis (for any reason)”

## Massachusetts (2012)

- “No punishment under state law for qualifying patients;” provides “protection from state prosecution and penalties;” “shall not be penalized under Massachusetts law in any manner, or denied any right or privilege, for such actions”
- Not required to accommodate on-site use in place of employment
- *Barbuto v. Advantage Sales & Marketing, LLC*, (Mass. Super. Ct., May 31, 2016): 1<sup>st</sup> case challenging Act
  - Ct. found no duty to accommodate use of drugs illegal under federal law; no private right of action under Act; no clear public policy for forbid dismissal; Act doesn’t restrict employer’s ability to discipline employee for medical marijuana
  - Dismissed claims for disability discrimination, violation of medical marijuana act and regulations, and termination in violation of public policy
  - Notice of appeal filed July 12, 2016

# Likely No Employee Protections

## New Hampshire (2013)

- No statutory employment protections
- No protections for being under the influence while in place of employment without written permission of employer
- Not required to accommodate medical use on property/place of employment
- Does not limit employer's ability to discipline employee for using cannabis in workplace or for working while under the influence

## New Mexico (2007)

- Statute provides criminal protections; silent on employment protections
- DOH FAQ: statute does not provide employment related protections
- *Garcia v. Tractor Supply*, No. 15-cv-00735 (D. N.M. Jan. 7, 2016)
  - Employer no duty to accommodate and no violation of New Mexico law or public policy for termination based on failed test

# Likely No Employee Protections

## **Vermont (2004)**

- Provides limited criminal protections
- Does not exempt patients from arrest or prosecution for being under the influence of marijuana in a workplace or place of employment or using or possessing marijuana “in a manner that endangers the health or well-being of another person”

## **Washington, D.C. (1998)**

- Provides limited criminal protections for patients
- 2014: law limiting employers from drug testing until conditional offer of employment

# States Where Employment Protections Unclear

- Florida (2016)
- Louisiana
- North Dakota (2016)



These States' Medical Marijuana Laws are silent as to employee protections and the State Departments of Health also provide no guidance on employee protections

# Employment Protections Unclear: Louisiana

- Amends law passed in 2015
  - Changes “prescribed” to “recommended”
- Still current issues for implementation
- Silent as to employment protections

# Marijuana Laws: Unemployment and Workers' Comp Benefits

## Michigan

- Appellate court held employee with medical marijuana card not disqualified from unemployment benefits after terminated for marijuana positive test result (*Braska v. Challenge Mfg.*, 307 Mich. App. 340 (2014))

## Illinois

- Appellate court found employee's admission of off-duty marijuana use not "misconduct" sufficient to deny unemployment benefits even if sufficient for discharge (*Eastham v. Housing Authority of Jefferson County*, No. 09-MR-57 (Ill. App. Ct. 5th Dist. Dec. 2, 2014))

## New Mexico

- Worker's Comp: Required employer and insurance company to pay for patient's medical marijuana for back pain (*Vialpando v. Ben's Automotive Servs et al.*, No. 32,920 (N.M. Ct. App., May 19, 2014))

## Arizona

- In 2015, law amended: removed requirement that workers' comp carriers and self-insurers reimburse patients for medical marijuana

# Medical Marijuana: How to Develop and Manage Drug Testing Program

- Decide how you want to handle medical marijuana in your company policy
  - Research state and local laws
  - Never have to allow marijuana use at the work site or impairment on the job
- Do you want to accommodate medical marijuana?
- Have a written policy

# Medical Marijuana: Drug Testing Policies

- Be Explicit:
  - Who is subject to testing?
  - How will it be administered?
  - Consequences of positive results- specifically address how marijuana usage will be handled
  - Be clear and transparent
- How to test?
  - Urine, hair, oral fluid?
  - Check state and local workplace drug testing laws
- Inform employees of policy and reason for policy
- Apply consistent treatment

# How to Handle Positive Medical Marijuana Test Results

- Even if employee claims medical marijuana status, MRO will report as positive for marijuana/THC
- MRO will generally tell employer that employee claims medical marijuana cardholder status
  - MRO has no way to verify cardholder status
- Employer verifies employee's cardholder status
  - View Card
  - Laws do not entitle employer to determine reason for marijuana card
- Information regarding marijuana cardholder status should be treated confidentially

# Questions?



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