

# **A Builder's Guidebook: Marijuana in the Home Building Industry**

Prepared For  
**THE NATIONAL ASSOCIATION OF HOME BUILDERS**



Contributed By  
**HOWARD L. WANDER, ESQ.**  
**ANGELO M. FILIPPI, ESQ.**  
**VIJAY S. CHOKSI, ESQ.**  
**SETH A. HYMAN**

FEBRUARY 2018

## **For information contact**

### **DAVID JAFFE**

Office of Legal Affairs  
800.368.5242 ext. 8317  
djaffe@nahb.org

### **ROBERT MATUGA**

Labor, Safety and Health  
800.368.5242 ext. 8507  
rmatuga@nahb.org

## **About the NAHB**

The National Association of Home Builders (NAHB) helps its members build communities. Each year, NAHB members construct about 80% of the new homes built in the United States, both single-family and multifamily. A federation of more than 700 state and local associations, NAHB represents more than 140,000 members. About one-third are home builders and remodelers. The rest work in closely related specialties such as sales and marketing, housing finance, and manufacturing and supplying building materials. NAHB's website address is [www.nahb.org](http://www.nahb.org).

## For legal counsel information contact

### **Howard L. Wander, Esq.**

Chief Operating Officer/Principal Partner  
Kelley Kronenberg, P.A.  
561.684.5956  
hwander@kklaw.com

### **Angelo M. Filippi, Esq.**

Partner  
Kelley Kronenberg, P.A.  
954.370.9970  
afilippi@kklaw.com

### **Vijay S. Choksi, Esq.**

Attorney/Regulated Substances Practice Group  
Kelley Kronenberg, P.A.  
954.370.9970  
vchoksi@kklaw.com

### **Seth A. Hyman**

Director of Business Development/Special Projects  
Kelley Kronenberg, P.A.  
561.684.5956  
shyman@kklaw.com

## About the firm



Kelley Kronenberg is a national full service law firm comprised of 10 offices with more than 120 lawyers. For more than 35 years, we have built our reputation through hard work, passion and a focus on client service. Our clients span a variety of industries and their needs encompass a wide range of legal services. We represent clients across more than 25 practice areas, taking pride in our policies and practices of exceptional personal service, prompt reporting and commitment to fully understanding and satisfying our client's needs.

Visit our website at [www.kelleykronenberg.com](http://www.kelleykronenberg.com)

# Disclaimer

These materials have been prepared and provided for educational purposes only. They should not be considered legal advice. The transmission of this information is not intended to create a lawyer-client relationship. Readers should not act upon this information without seeking professional legal counsel. **Do not depend solely on information in this guidebook – it is not a substitute for licensed legal counsel.** It is important to consult legal counsel if presented with similar situations contained within this guidebook. Use of this guidebook in no way removes or reduces your liability when interacting with employees.

## **A Builder's Guidebook: Marijuana in the Workplace**

Copyright © 2017 by Kelley Kronenberg, P.A.

All rights reserved. Except as permitted under U.S. Copyright Act of 1976, no part of this publication may be reproduced, distributed, or transmitted in any form or by any means, or stored in a database or retrieval system, without the prior written permission of the publisher.

# TABLE OF CONTENTS

	Page #
<b>CONTACT INFORMATION</b> .....	2
<b>ABOUT THE FIRM</b> .....	2
<b>DISCLAIMER</b> .....	4
<b>LIST OF FIGURES</b> .....	6
<b>INTRODUCTION</b> .....	7
<b>1. LEGAL MARIJUANA OVERVIEW</b> .....	8
1.1 State Law vs. Federal Law .....	8
1.2 Recreational Use vs. Medical Use .....	8
1.3 Forms of Marijuana Available To Consumers .....	9
1.4 The Effects of Marijuana .....	9
<b>2. COMMON BUILDER ISSUES</b> .....	10
2.1 Hiring .....	10
2.2 Firing .....	11
2.3 Wrongful Termination .....	13
2.4 Drug-Testing .....	14
2.5 Off-Site Drug Use .....	17
2.6 Medicated During Work .....	18
2.7 Drug-Free Workplace Act .....	19
2.8 ADA .....	20
2.9 Accommodations .....	21
2.10 OSHA .....	22
2.11 Federal Construction Projects .....	23
2.12 Creating Your Employer Policy .....	24
2.13 Workers' Compensation .....	25
<b>CONCLUSION</b> .....	26
<b>DEFINITIONS</b> .....	27
<b>3. COMPILATION OF STATE MARIJUANA LAWS</b> .....	29
<b>APPENDIX A – State Medical Marijuana Programs</b> .....	67

# LIST OF FIGURES

Figure #		Page #
1-1	<b>Do you have a Prescription for Marijuana? .....</b>	<b>9</b>
2-1	<b>TIP: Safe Keeping Employee Records .....</b>	<b>12</b>
2-2	<b>States with Discriminatory Employee Protection .....</b>	<b>13</b>
2-3	<b>TIP: Sending Employees Home .....</b>	<b>18</b>
2-4	<b>Map: Legalization of Marijuana by State .....</b>	<b>21</b>
2-5	<b>Sample Policy Language for Construction Industry Employers .....</b>	<b>24</b>
2-6	<b>States with Recreational Marijuana .....</b>	<b>26</b>

# INTRODUCTION

Cautious construction employers have persistently made safety a priority, and now have a new safety issue to account for -- the expanding use of marijuana. With the passage of marijuana usage laws sweeping the country, potential hazards facing the construction industry need to be addressed. Certain common concerns will undoubtedly arise for home builders. This guidebook will highlight issues relating to the use of marijuana and home builders.

This guidebook is arranged into three sections. The first section provides a brief overview of marijuana. The second section outlines common employment issues facing the construction industry regarding marijuana specifically as it relates to home builders. The third section outlines the various marijuana state laws and highlights important information regarding the language contained in marijuana laws. Additionally, a glossary is provided at the end of this guidebook to aid in the proper understanding of this writing.

---

# SECTION 1

---

## 1. LEGAL MARIJUANA OVERVIEW

This section of the guidebook will briefly discuss the difference between federal vs. state laws; medical use of marijuana vs. recreational use of marijuana; and the different types and forms of marijuana available to consumers.

### 1.1 STATE LAW VS. FEDERAL LAW

Under federal law, any form and or use of marijuana is illegal. The current position taken by the federal government is that marijuana has, “no currently accepted medical use and a high potential for abuse.”<sup>1</sup> Despite marijuana being illegal on a federal level, many states have allowed marijuana for recreational use and/or medical use. The conflict between the federal prohibition of marijuana use and state laws legalizing marijuana use creates conflicts in the workplace, and requires expert guidance in order to reduce risk for the construction industry.

As a builder in the construction industry, the laws that govern the employment relationship vary from state to state. The same is true for marijuana laws, as many states have adopted unique language in laws permitting usage of the drug. A distinction between the construction and marijuana laws is that legalization of marijuana is fairly new;<sup>2</sup> therefore, there is relatively few cases which help navigate potential liability in the space.

### 1.2 RECREATIONAL USE VS. MEDICAL USE

Consumers who use marijuana for recreational purposes often use it to achieve a euphoric feeling rather than treating or easing a medical condition. The key difference between recreational and medical marijuana is that recreational marijuana can be purchased without doctor involvement. For example, a recreational marijuana user can go into any recreational dispensary and make a purchase - provided they meet their state’s minimum age requirement.

Whereas medical marijuana is much more regulated in terms of the users that may consume it and must pass its respective state’s rigid regulations regarding cultivation and manufacturing. Many medical marijuana producers manufacture their products utilizing the same standards used by pharmaceutical companies - this results in medicinal products that have an increased level of consistency and quality. It should be noted; the FDA does not approve or recognize marijuana as a medicine. Studies published worldwide, however, have found that marijuana can be used to alleviate the symptoms of certain medical conditions in its users.

---

<sup>1</sup> <https://www.dea.gov/druginfo/ds.shtml>

<sup>2</sup> In 1996, California was the first state to pass and allow for the medicinal use of marijuana.

Figure 1-1

**“Do You Have a Prescription for Marijuana?”**

*There is no such thing as a “marijuana prescription.” Marijuana is a Schedule I substance under the Controlled Substances Act. Schedule I substances have no accepted medical use. Therefore, a doctor cannot legally “prescribe” marijuana. As a result, state laws that permit marijuana usage provide that a physician must “certify” or “recommend” an individual to use medical marijuana.*

### 1.3 FORMS OF MARIJUANA AVAILABLE TO CONSUMERS

As marijuana laws are rapidly evolving so too is the strength and potency of the drug. Over the past decade, the variety of chemicals derived from the marijuana plant which are available for consumers and patients have grown tremendously. In addition, delivery devices used by medical marijuana patients range from lotions, capsules, edibles, oils, tinctures, vaporizers, lozenges, and nasal sprays. The variety of delivery devices available for consumers do not affect the strength and/or potency of the marijuana instead the delivery device is merely the means to deliver the marijuana to the patient. The potency and /or strength of the medical marijuana will be defined on the product packaging and/or be specified on a patient’s Order and/or Recommendation. It is also important to note that some states have disallowed the use of whole flower marijuana for medical use, while other states have allowed the medical use of whole flowers by patients.

### 1.4 THE EFFECTS OF MARIJUANA

According to DEA, the effects of marijuana include loss of coordination, distorted perception and problems with learning, problem-solving and memory. Given the risks in the workplace, any level of impairment caused by marijuana could affect safety on a worksite. **Builders should treat medical marijuana the same as any other prescription drug such as Vicodin or Percocet, which impair mental and physical abilities and affect worker and workplace safety.**

---

## SECTION 2

---

### 2. COMMON BUILDER ISSUES

#### 2.1 HIRING

##### **2.1.1 DO I HAVE TO HIRE A JOB APPLICANT WHO TELLS ME THEY USE MEDICAL MARIJUANA?**

In most states, the answer is no. However, in other states, the Courts have required employers to consider an accommodation under disability laws for off-site use of the drug. In these states, the employer cannot summarily deny applicants employment, simply because they are medical marijuana users. It is imperative to contact an employment lawyer in your state to determine if you have an obligation under the discrimination laws and regulations in your state to consider accommodation before rejecting an otherwise qualified applicant who has been made an offer of employment prior to the discovery of marijuana use.

##### **2.1.2 THE NEW BRICK-LAYER APPLICANT TESTED POSITIVE FOR MEDICAL MARIJUANA, CAN I REFUSE TO HIRE THEM?**

Yes, if your Employer Policy is clear on this issue, you as an employer or hiring manager can refuse to hire the brick-layer applicant on the basis of a failed pre-hire drug test without fear of repercussion if you are in a state where Courts have NOT required employers to consider an accommodation under disability laws for off-site use of the drug. If you are in a state, where the Courts have required employers to consider an accommodation under disability laws for off-site use of the drug. It is imperative to contact an employment lawyer in your state to determine if you have an obligation under the discrimination laws and regulations in your state to consider accommodation before rejecting an otherwise qualified brick-layer applicant.

## 2.2 FIRING

### **2.2.1 CAN I FIRE MY EMPLOYEE FOR USING LEGAL RECREATIONAL MARIJUANA DURING THEIR TIME OFF (NIGHTS AND WEEKENDS)?**

Legal recreational marijuana is only permitted in eight (8) states. See Figure 2-6. No state has created a private right of action for wrongful termination on the basis of using marijuana recreationally. So if an employer has a zero-tolerance drug policy in place and discovers that an employee is using marijuana recreationally and decides to fire said employee, doing so would not implicate any disability or human right laws, meaning, the employer would be able to exercise its zero-tolerance policy without fear of repercussion.

### **2.2.2 KATHY THE ELECTRICIAN HAS BEEN ON THE JOB FOR 10 YEARS, SHE JUST TOLD HER BOSS SHE'S A LEGAL MEDICAL MARIJUANA USER. CAN KATHY'S BOSS FIRE HER FOR USING MEDICAL MARIJUANA OFFSITE?**

The answer to this question depends on Kathy's state. For example, if Kathy lived in Minnesota and was registered in Minnesota's medical marijuana program, she would be protected from termination. If Kathy is in a state which unequivocally states in its statutes that no accommodation is required, Kathy's employer may terminate her regardless of the nature of the position (safety-sensitive vs. non-safety-sensitive). If Kathy is in a state that has not yet directly addressed the issue, then the answer is more nuanced and may require some form of accommodation. In deciding whether an accommodation is necessary, we must turn our attention to those states that have considered the issue. For example, some states have statutory language stating that no accommodation shall be required for offsite use. In these states, firing Kathy prior to engaging in the interactive process may expose employers to liability on state anti-discrimination grounds. If a state's statute explicitly states no accommodation is required for 'offsite use' and is silent on 'onsite use' then it could be argued that it is implied that an accommodation is required for employees' onsite use. As a potential accommodation, Kathy's employer may remove her from her current safety-sensitive position as an electrician and place her into a non-safety sensitive position that she qualifies for. Her new position does not have to provide her with the same pay as she earned as an electrician. It is also important to note that if Kathy is working on a worksite funded by the federal government or working for a federal contractor, then she could be disciplined and/or fired. In doing so, Kathy's employer would be protected from any claim of discrimination. This is a complex area, as such it is recommended employers seek experienced legal counsel.

### 2.2.3 CAN AN EMPLOYER TERMINATE AN EMPLOYEE FOR BEING UNDER THE INFLUENCE OF MARIJUANA AT WORK?

Yes, although it may be difficult to establish that a person was under the influence of marijuana. It is advisable to document all behaviors and witness testimony that the employee was under the influence of marijuana during work.

### 2.2.4 CAN I FIRE MY EMPLOYEE FOR TESTING POSITIVE FOR MARIJUANA?

There is no uniform answer to this question. If an employer is faced with a question similar to this, it is strongly advised to seek legal counsel for guidance. The answer can depend on a variety of factors, including:

- ✓ Clear and concise drug policy
- ✓ The state your business operates in
- ✓ The manner in which the drug test was performed

For example, under the Arizona Medical Marijuana Act, an employer cannot terminate an employee for the medical use of marijuana unless there is evidence of use within and during the scope of the employee's employment. The exception to this prohibition applies if the retention of an employee would result in the employer losing a monetary or license-related federal benefit. This exception is widely viewed as a reference to the Drug-Free Workplace Act. However, because the Drug-Free Workplace Act only prohibits the unlawful use or possession of drugs in the workplace, the exception has little practical application for employers attempting to comply with the AMMA. In assessing the 'firing dilemma', the employer should first determine whether the employee is a registered Arizona medical marijuana cardholder. If so, and the employee was not using marijuana or impaired during work hours, then the employer may not discriminate, discipline or terminate the employee. Marijuana should be treated like any other lawfully prescribed drug that may impair an employee's functioning at work. It is also important to note, if the employee's position is "safety-sensitive," the employer may take appropriate action – which includes reassigning the said employee from his or her safety-sensitive position. *Also see Figure 2-2 and question 2.4.3.*

Figure 2-1

#### **TIP: Safe Keeping Employee Records**

***Keep the status of all employees who are marijuana users. Be sure to keep any information confidential and keep all medical information you receive in a file separate from the employee's personnel file.***

## 2.3 WRONGFUL TERMINATION

### 2.3.1 WILL I GET SUED FOR FIRING MY EMPLOYEE BECAUSE THEY USE MARIJUANA?

It depends. If you are a federal contractor, you are protected from any liability stemming from terminating employees who use marijuana. If you are not a federal contractor, you should consult with legal counsel before taking any adverse action. The answer to this question will greatly depend on your drug policy and the state where your construction employee works.

For example, if you have employees in states with marijuana laws that protect against discrimination by requiring accommodations of employees who use medical marijuana, like Arizona, Connecticut, Delaware, Maine, Minnesota and Rhode Island -- then you should immediately consult with an attorney to advise you when adverse actions are under consideration. In Massachusetts, this issue has come up where an employee tested positive for marijuana and was terminated. The Massachusetts employee sued her employer on state discrimination grounds and the Court held there was a cause of action under Massachusetts' disability statute requiring reasonable accommodations. This same scenario played out in Washington State, and the court reached the opposite decision, ruling that firing a Washington employee for testing positive for marijuana does not violate disability laws.

**Figure 2-2**

**States with Discriminatory  
Employee Protection**

- 1. Arizona**
- 2. Connecticut**
- 3. Delaware**
- 4. Maine**
- 5. Minnesota**
- 6. Rhode Island**

## 2.4 DRUG-TESTING

### **2.4.1 HOW LONG DOES MARIJUANA STAY IN YOUR SYSTEM AFTER CONSUMPTION?**

Most studies show marijuana is detectable in someone's system for up to 30 days, sometimes longer. The amount of time marijuana stays in a user's system will depend on the user's past use of marijuana, fat content, exercise regimen and strength of the marijuana used.

### **2.4.2 CAN I DRUG-TEST MY EMPLOYEES FOR MARIJUANA?**

Yes, in every state you can drug test your employees for marijuana, providing that your drug policy allows for it. Employers may drug test for marijuana, even in states where marijuana is legal. For the most part, states' marijuana laws support employers in testing for marijuana use. However, it is important to consult your state laws to ensure that you may drug-test employees and ensure that you have clearly outlined the drug testing and termination procedures in your employer drug policy.

### **2.4.3 WHAT IF MY CURRENT EMPLOYEE TESTS POSITIVE FOR MARIJUANA?**

If your employee tests positive for marijuana, your drug-free workplace policy can generally be applied in most states. In some states, you may be required to accommodate or at least engage in an interactive process with the employee relating to a potential accommodation to protect against any potential state anti-discriminatory liability. *Also see Figure 2-2 and question 2.2.4.*

#### **2.4.4 WHAT IF AN APPLICANT OR EMPLOYEE IS NOT “UNDER THE INFLUENCE” AT WORK, YET STILL TESTS POSITIVE FOR MARIJUANA?**

You should consult your drug policy to see if this scenario is outlined. If so, you should act according to your drug policy. If you have a zero-tolerance drug policy -- the option to terminate should be used if the employee fails to furnish the doctor order or patient ID card. If you do not terminate your employee based on your zero-tolerance policy, then you will open yourself to discriminatory liability if you terminate any employee in violation thereafter. So it is important that if you do have a zero-tolerance drug policy, you use it and apply it uniformly throughout your organization without discretion. If you have not implemented a zero-tolerance drug policy, the answer to this question becomes a bit more nuanced depending on your state and if your company is a federal contractor. It is important to consult the laws in your state before taking any action in order to ensure no liability on discrimination grounds exist.

#### **2.4.5 SHOULD I USE A URINE-TEST FOR MY DRUG TESTING?**

The urine drug test is an industry standard and is recommended for all drug-testing needs for builders. Urine tests are easy to administer, readily available and if need be can be used on the construction site. Marijuana (THC) use can usually be detected in users up to 30 days or more. The main problem with urine tests is that it cannot detect if the user is currently impaired or under the influence of marijuana. Instead, urine tests may turn positive long after the effects of marijuana have worn off. Currently, there are no drug tests available in the marketplace that can detect marijuana impairment in real-time.

#### **2.4.6 WHAT TO DO IF AN APPLICANT TESTS POSITIVE IN A PRE-EMPLOYMENT DRUG TEST?**

It depends. In some states, like Arizona, employers may not discriminate against applicants for using medical marijuana if the applicant is a registered cardholder. Generally, if an applicant tests positive for marijuana, determine whether hiring the applicant would run afoul of your drug policy. If so, you can choose not to hire based on that fact. In addition, if the position is “safety-sensitive,” the employer may refuse to hire the applicant. In most cases, there is no clear-cut answer, and it is strongly recommended that you seek legal advice as these situations can be complex to navigate.

**2.4.7 IF AN EMPLOYER SUSPECTS AN EMPLOYEE IS IMPAIRED, CAN IT REQUIRE THE EMPLOYEE TO SUBMIT TO A DRUG TEST?**

Yes. This would constitute “reasonable suspicion testing.” However, it is important to note that the employer should define *reasonable suspicion* in its drug policy and identify specific behaviors that might trigger such suspicion in order to prove the employer’s suspicion was objectively reasonable under the circumstances.

**2.4.8 IF AN EMPLOYEE IS IN AN ACCIDENT WHILE ON THE JOB, IS THE EMPLOYEE REQUIRED TO SUBMIT TO A DRUG TEST?**

The answer to this question depends on the employer’s drug policy and the state worker’s compensation law, which could require post-incident drug testing. It is also important to note, pursuant to Occupational Safety and Health Administration (OSHA)’s 10/19/2016 memorandum concerning the Interpretation of *1904.35(b)(1)(i) and (iv)* - OSHA could consider post-accident drug testing as retaliation, if the employer does not and did not have a reasonable basis for concluding that the accident/injury could not have been the result of drug use. *Also see question 2.10.1.*

## 2.5 OFF-SITE DRUG USE

### 2.5.1 IF CARL THE CRANE OPERATOR ARRIVES ON THE CONSTRUCTION SITE SMELLING LIKE MARIJUANA AND LOOKING “HIGH.” HOW SHOULD CARL’S SUPERVISOR HANDLE THIS SITUATION SINCE CARL IS IN A SAFETY-SENSITIVE POSITION?

Carl’s supervisor should immediately remove Carl from his safety-sensitive position as a crane operator. Once Carl is removed from his position, Carl’s supervisor should seek other members/employees who can validate/confirm Carl smelled like marijuana and/or looked “high.” The members/employees should then clearly document their observations of Carl. Once documented, Carl’s supervisor should meet with Carl to explain the observations and documented behavior/appearance and then arrange for transportation for Carl to submit for “reasonable suspicion testing.” To reiterate before drug testing Carl, you must have “reasonable suspicion” that Carl has been using marijuana. Reasonable suspicion means that you have a legitimate reason, based on a credible source and facts, to believe that Carl has been taking drugs. Reasonable suspicion can vary depending on the circumstance. Common examples of reasonable suspicion include but are not limited to:

- ✓ Irregular behavior
- ✓ Substantial deterioration in work performance
- ✓ Physical symptoms of drug use (uncoordinated movement, smell etc.)
- ✓ Direct observation of drug use
- ✓ Report from a reliable source that an employee is using drugs
- ✓ Evidence that the employee has used, possessed, sold or solicited, transferred drugs while at work

Once you have established reasonable suspicion, you should then ask Carl to submit to a drug test. *Also see question 2.4.7.*

## 2.6 MEDICATED DURING WORK

### 2.6.1 CAN AN EMPLOYER PROHIBIT MARIJUANA USE AT WORK?

Yes. Employers in all states may prohibit any and all forms of marijuana use at work or at the worksite. As an employer, you are not required to tolerate employees using marijuana at work.

### 2.6.2 ARE LEGAL MEDICAL MARIJUANA USERS ALLOWED TO CONSUME MARIJUANA ON BREAKS OR LUNCH HOURS?

No. Employers in all states may prohibit any and all forms of marijuana use at work or at the worksite. To date, no state law or Court decision mandates that employers must tolerate employees under the influence of marijuana on the employer's premises or during work hours.

Figure 2-3

#### TIP: Sending Employees Home

*If the decision is made to send an employee home, be sure to make the necessary arrangements to have the employee arrive home safely. Do not allow, instruct and/or imply that an impaired employee should drive. If you have a situation where you suspect an employee may be impaired and you are unsure what to do, contact legal counsel.*

## 2.7 DRUG-FREE WORKPLACE ACT

### **2.7.1 HOW DOES THE LEGALIZATION OF MARIJUANA CHANGE THE WORKPLACE?**

Employers need to review their workplace policies and make tough decisions regarding drug policies. While federal contractors and those that operate under Department of Transportation are required to prohibit employees from using marijuana, employers outside these categories, which operate in states that have legalized the drug for medical purposes, are not so constrained. Employers must decide whether they will “accommodate” employees with disabilities in those states where the laws prohibiting disability discrimination have not been tested or where the medical marijuana statute itself prohibits discrimination or provides that an employer may prohibit “on-site,” use. The only constant is the principle that use of marijuana in the workplace, or impairment while at work need not be tolerated.

### **2.7.2 IF OPIATES ARE CONSIDERED A CONTROLLED SUBSTANCE, WHY DON'T THEY VIOLATE OUR CONSTRUCTION COMPANY'S DRUG-FREE WORKPLACE POLICY?**

The Controlled Substance Act (CSA) categorizes substances in Schedules ranging from 1 through 5. For example, Vicodin and Percocet are considered Schedule 2 controlled substances which means they can be addictive but are nonetheless, recognized as prescription drugs by the Federal Food and Drug Administration (FDA). Conversely, Marijuana is considered a Schedule 1 controlled substance meaning it cannot be legally prescribed; is considered highly-addictive; and is not recognized as having any medicinal value by the Federal Government. Regardless, if an employee is working in a safety-sensitive position, has a prescription for opiates and reports to work impaired, the employee should be taken off that position and relocated to a non-safety-sensitive position or sent home.

## 2.8 ADA

### **2.8.1 DOES THE ADA APPLY TO MARIJUANA USERS?**

No, the ADA does not cover marijuana users. The ADA defines “illegal drugs” on a federal level, not on a state level. Since marijuana is federally illegal, it would be considered an “illegal drug” under the ADA, and thus the ADA would not apply or cover employees who are marijuana users.

### **2.8.2 IF MY EMPLOYEE CARLOS TELLS ME HE USES MARIJUANA LEGALLY FOR MEDICAL REASONS, DOES THAT MEAN CARLOS HAS A “DISABILITY” UNDER THE ADA?**

Maybe. In certain states, medical marijuana is recommended by physicians to treat patients with diseases that could constitute a disability under the ADA. Examples of some medical conditions that constitute as a disability under the ADA include but are not limited to: multiple sclerosis, PTSD, cancer, epilepsy and Crohn’s disease. Just because Carlos uses medical marijuana does not necessarily mean that Carlos suffers from a disability under the ADA. For example, if Carlos’ underlying medical condition were cancer then that would constitute as a disability under the ADA, then Carlos’ employer may be required to participate in the interactive process to discuss with Carlos if a reasonable accommodation is appropriate. If Carlos’ medical marijuana recommendation is based on a medical condition that would not constitute as a disability under the ADA – like migraines, then Carlos’ employer would not be required, under the ADA, to engage Carlos in the interactive process to determine if a reasonable accommodation can be provided.

It is also important to note that Carlos may be eligible for leave under the Family Medical Leave Act (FMLA) if his condition is a “serious health condition” as defined by the FMLA.



## 2.10 OSHA

### 2.10.1 CAN AN EMPLOYER IN A LEGAL MEDICAL MARIJUANA STATE REQUIRE EMPLOYEES TO UNDERGO POST-ACCIDENT DRUG TESTING?

Federal law does permit employers to test for drugs during accident investigations. According to OSHA, it does not prohibit employers from drug testing employees who report work-related injuries and illnesses as long as the employer has an ***objectively reasonable basis*** for conducting the drug testing, i.e., that the employer can show a reasonable basis for believing that drug use could have contributed to the reported injury or illness. OSHA prohibits the use of drug testing by employers as a form of discipline against employees who report workplace related injuries or illnesses. **Note, OSHA regulations clearly state that employers can continue to have drug-free workplace policies, and should prohibit the use of or being under the influence of controlled substances while at work.**

## 2.11 FEDERAL CONSTRUCTION PROJECTS

### **2.11.1 IF I'M A FEDERAL CONTRACTOR OR FEDERAL GRANT RECIPIENT, CAN I FIRE MY EMPLOYEES WHO USE MARIJUANA?**

Yes, in fact, employers who are also federal contractors and/or federal grant recipients must impose sanctions on employees. Sanctions may include termination from employment or require the employee's satisfactory participation in a drug abuse assistance or rehabilitation program. Federal grant recipients are subject to these same restrictions. Additionally, employers whose business activities extend into the federally regulated transportation industry are subject to federal Department of Transportation (DOT) requirements concerning workplace drug testing. The DOT imposes such requirements for employees operating commercial carriers and commercial driver's license holders.

## 2.12 CREATING YOUR EMPLOYER POLICY

### 2.12.1 SHOULD I IMPLEMENT A ZERO-TOLERANCE POLICY?

Given the nature of the construction industry, it would be wise that all builders adopt and implement a zero-tolerance drug policy.

### 2.12.2 WHAT SHOULD MY POLICY STATE?

Your drug-policy should state:

- ✓ *Possession, use of, solicitation, or impairment from marijuana in the workplace will not be tolerated. Although marijuana cannot be lawfully prescribed, it will be treated like any other lawfully prescribed drug that may impair functioning at work.*
- ✓ *We do not tolerate any employee being impaired by drugs, legal or illegal, at the workplace or anyplace within the scope of employment.*
- ✓ *Employees cannot report to work impaired. Employees should notify their supervisor(s) of any impairment from medication that could pose a safety-risk or affect their ability to work.*

Figure 2-5

#### Sample Policy Language for Construction Industry Employers:

##### ***Your Safety and Marijuana Usage***

*The safety of our employees and the general public is [COMPANY'S] highest priority. Marijuana usage for any purpose remains illegal under federal law and is a risk to health and safety on any construction site. [COMPANY] strictly prohibits illegal drug possession, use, solicitation, or impairment, and medical marijuana is no exception. [COMPANY] intends to follow all state and federal laws, but where they conflict, the company will follow federal law.*

### 2.12.3 SHOULD I CHANGE MY DRUG-TESTING POLICIES?

Yes, it is advisable for employers to update all policies relating to drug use and drug testing and keep all employees informed as to the changes being made. It is also advisable for employers to add or update their Employer Policy to prohibit discrimination against applicants or employees based on their status as medical marijuana users.

## 2.13 WORKERS' COMPENSATION

### **2.13.1 DO WORKERS' COMPENSATION BENEFITS COVER THE PURCHASE OF MEDICAL MARIJUANA?**

NO, except in New Mexico. New Mexico Court of Appeals held that marijuana may be a "reasonable and necessary" medical treatment for a workplace injury, and if a treatment is reasonable and necessary, the employer and its insurer are responsible for paying the bill. See *Vialpando v. Ben's Automotive Services*, 2014-NMCA-084, 331 P.3d 975 (N.M. Ct. App.), cert. denied, 331 P.3d 924 (N.M. 2014); see also *Lewis v. American Gen. Media*, 355 P.3d 850, 856-58 (N.M. App. 2015) (rejecting challenge to reimbursement for medical marijuana under Workers' Compensation Act based on federal preemption); cf. *Maez v. Riley Indus.*, 347 P.3d 732, 735-37 (N.M. App. 2015) (finding sufficient evidence that medical marijuana was medically necessary). Since state laws are ever changing, employer's are encouraged to stay up to date on their respective state statutes.

### **2.13.2 IF AN EMPLOYEE SUSTAINS A WORK INJURY CAN A WORKERS' COMPENSATION CLAIM BE DENIED IF IT CAN BE PROVED THE EMPLOYEE WAS UNDER THE INFLUENCE OF MARIJUANA AT WORK?**

It depends on the state of employment. For example, in Arizona, the answer is NO. The Arizona Supreme Court has held workers' comp benefits cannot be denied if the employee was performing some aspect of the job at the time of the injury, even if the employee was under the influence of marijuana at the time of injury. If faced with a similar situation, please contact legal counsel.

# CONCLUSION

For the construction industry and builders alike, marijuana is a safety and hazard issue. Careful builders should keep track of pending legislation in their state and update their employment policies accordingly and with the help of competent legal counsel. Construction industry employers should take the following actions:

- ✓ Review all applicable federal and state laws, government contracts and licensing requirements relating to marijuana use, and ensure compliance. *Also see Figure 2-1.*
- ✓ Determine whether the employer currently has employees in states that have legalized recreational or medical marijuana use, and check the evolving requirements of each law. Update your drug-free workplace policy and drug-testing policy and procedures. *Also see Figure 2-4.*
- ✓ Provide all employees education on new and existing company policies.
- ✓ Remind employees and ensure that the drug-free workplace policy and drug-testing policy expressly states that employees may not use, sell, possess or be under the influence of marijuana (or other unlawful drugs) during work time or on company premises and state that on-the-job impairment is not tolerated and that medical marijuana is no exception.
- ✓ In states where recreational use is allowed, adopt a policy that expressly addresses recreational marijuana use. Keep in mind that even in states that have approved recreational use, the laws in some recreational states expressly state that employers may prohibit employee marijuana use.

Figure 2-6

## States with Recreational Marijuana

1. **Alaska**
2. **California**
3. **Colorado**
4. **Maine**
5. **Massachusetts**
6. **Nevada**
7. **Oregon**
8. **Washington**

# DEFINITIONS

1. **ADA** (or “the Americans with Disabilities Act”) – is designed to allow people with disabilities access to the same employment opportunities and benefits available to disabled people without disabilities. Employers must provide reasonable accommodations to qualified applicants or employees. A reasonable accommodation is any modification or adjustment to a job or the work environment that will enable an applicant or employee with a disability to participate in the application process or to perform essential job functions
2. **Cannabinoids** – A cannabinoid is one of a class of diverse chemical compounds found in marijuana that acts on cannabinoid receptors in cells that alter neurotransmitter release in the brain. Marijuana has over 400 various types of cannabinoids. The most two popular forms and most studied forms of cannabinoids are THC and CBD.
3. **Cannabis** – Also known as marijuana, weed among other names, is a plant intended for medical or recreational use.
4. **CBD** (or “Cannabidiol”) – It is a non-psychoactive cannabinoid and counter acts the euphoria state that is associated with the THC found in marijuana.
5. **CSA** (or “the Controlled Substances Act”) – is the federal U.S. drug policy under which the manufacture, importation, possession, use and distribution of certain narcotics is regulated. Within the CSA there are five schedules (I-V) that are used to classify drugs based upon their abuse potential, medical applications, and safety. Marijuana is classified as Schedule 1.
6. **Drug-Free Workplace Act** – is a piece of legislation regulating federal contractors and grantees. Under the act, a drug-free workplace policy is required for any organization that receives a federal contract of \$100,000 or more any organizations receiving a federal grant of any size.
7. **FMLA** (or “The Family and Medical Leave Act of 1993”) – is a U.S labor law requiring covered employers to provide eligible employees with job-protected and unpaid leave for qualified medical and family reasons.
8. **Home Cultivation** – Some states allow for individuals to cultivate marijuana in their residency. The state’s where this is allowed has many of the following restrictions (i) number of plants that can be grow; (ii) number of plants based on their maturity; (iii) Minimum age to cultivate; (iv) total weight of usable marijuana; (v) visibility of plants to the public; (vi) Medical Marijuana patient who verifies financial and or accessibility hardship.
9. **Interactive process** – refers to the collaborative effort involving an employer and employee to determine if the employee can return to work subsequent to an occupational or non-occupational injury, disease or disorder. Includes discussion of potential accommodation to allow employees to perform essential function of job or possible transfer of employee to position for which he/she is qualified for and can perform essential functions with/or without accommodations.

10. **Medical Use** – The term “Medical Use” refers to Marijuana users who use the drug to treat or ease a chronic medical condition. Medical marijuana can only be purchased with a doctor’s recommendation providing the patient has one or more of their state’s qualifying medical conditions.
11. **Recreational Use** – The term “Recreational Use” differs from the term “Medical Use.” Marijuana users who use it recreationally often use it to achieve a euphoric feeling rather than to specifically treat or ease a chronic medical condition. The key difference between medical and recreational marijuana is that recreational marijuana can be purchased without a doctor’s recommendation or the buyer having a qualifying medical condition. A recreational marijuana buyer can go into any recreational dispensary and make a purchase provided they are over their state’s required minimum age to make their purchase.
12. **THC** (or “Tetrahydrocannabinol”) – Is the chemical in marijuana that is responsible for most of the psychological and euphoria effects of marijuana. THC is produced naturally by the flowers of the marijuana plant. It forms a clear, sticky residue on the flower known as “Trichomes.”
13. **Safety-Sensitive Position** – is a job or position where the employee’s performance of job duties could result in a direct threat of injury to himself or others. It would be particularly dangerous if such an employee is using drugs or alcohol while on job.

---

## SECTION 3

---

# Compilation of State Marijuana Laws\*

**\*Why are some states not on the following list?** The following list includes states that have legalized the use of marijuana for either recreational and/or medical purposes. Not every states has adopted such laws.

## **Alabama**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** No

**CBD:** Yes

To become a patient eligible for CBD under Leni's Law, the patient must (i) receive a diagnosis of a serious condition that is resistant to conventional medicine; (ii) be provided CBD by a physician with whom they have a bona fide physician-patient relationship with; and (iii) the CBD must be likely to provide the patient with therapeutic or palliative relief.

**Qualifying Medical Condition(s):** An affirmative defense is available if CBD would likely provide the patient with therapeutic or palliative relief to a host of conditions including cachexia or wasting syndrome, severe or chronic pain, severe nausea, seizures, severe and persistent muscle spasms. There is also a catch-all provision to include any other condition that is severe and resistant to conventional medicine as an eligible condition.

**Drug Access:** CBD can be legally obtained under Leni's Law whereby the medicine is provided by a physician.

**ID Cards Issued:** No

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

## Alaska

**Recreational Use:** Yes

**Home Cultivation:** Yes

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, glaucoma, HIV or AIDS, any chronic or debilitating disease or treatment for such diseases, which produces conditions that may be alleviated by the medical use of the marijuana. Conditions also include, cachexia, severe pain, severe nausea, seizures, including those that are characteristic of epilepsy, or persistent muscle spasms, including those that are characteristic of multiple sclerosis. Other conditions are subject to approval by the Alaska Department of Health and Social Services.

**Drug Access:** Marijuana can be purchased through regulated stores for adults who are 21 or older.

**ID Cards Issued:** For Medical Use Only

**Employer Exemption or Obligations:** Employers may prohibit marijuana use, transportation, possession, sale, growth, or transfer by employees.

*Employers should be aware of medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.*

## **Arizona**

**Recreational Use:** No

**Home Cultivation:** \*Yes

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, glaucoma, HIV/AIDS, hepatitis C, ALS, Crohn's disease, Alzheimer's disease, cachexia or wasting syndrome, severe and chronic pain, severe nausea, seizures (including epilepsy), severe or persistent muscle spasms (including multiple sclerosis) and PTSD.

**Drug Access:** Available through Department of Health Services-regulated nonprofit dispensaries

**ID Cards Issued:** Yes

**Employer Exemption or Obligations:** The Arizona Medical Marijuana Act (AMMA) provides employment protections for individuals who use marijuana in compliance with state medical marijuana laws. Under the AMMA, an employer cannot rightfully discriminate in hiring, firing, or make any condition of employment (including drug testing) based on a person's status as a holder of a valid medical marijuana card. The AMMA prohibits an employer from imposing discipline or rehabilitation if the employee has a valid medical marijuana card and tests positive for marijuana—unless the employee used, possessed, or was impaired by marijuana at work or during work hours.

Employers are not required to accommodate the medical use of marijuana in any workplace. An employer may refuse to hire or terminate an employee based on their status as a registry ID cardholder if the employer stands to lose a federal benefit by continuing to employ the patient. There are some circumstances where Arizona employers may be able to designate certain positions as "safety-sensitive" and refuse to hire cardholding applicants for those positions that the employer believes in good faith could affect the safety or health of the cardholding employee or others.

*\*With permission from the ADHS for patients who live further than 25 miles away from the nearest dispensary.*

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## **Arkansas**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, glaucoma, HIV, AIDS, hepatitis C, ALS, Tourette's, Crohn's disease, ulcerative colitis, PTSD, severe arthritis, fibromyalgia, Alzheimer's, wasting syndrome, peripheral neuropathy, intractable pain, severe nausea, seizures, and severe or persistent muscle spasms. The Health Department can and may approve additional conditions.

**Drug Access:** The Department of Health plans to license 32 dispensaries. There is no deadline for when licensees will be announced.

**ID Cards Issued:** Will be issued by the Department of Health. Members of the U.S. military and the Arkansas National Guard may not enroll in the program as caregivers or patients.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## **California**

**Recreational Use:** Effective January 1, 2018

**Home Cultivation:** Yes

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, including spasms associated with multiple sclerosis, seizures, including seizures associated with epilepsy, severe nausea; or any other illness for which marijuana provides relief.

**Drug Access:** Medical Marijuana is available through collectives, cooperatives and dispensaries.

**ID Cards Issued:** Optional and issued by the Department of Public Health.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

*Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.*

## **Colorado**

**Recreational Use:** Yes

**Home Cultivation:** Yes

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, HIV, AIDS, glaucoma, PTSD, severe pain, cachexia, severe nausea, seizures, and persistent muscle spasms. The Health Department can approve additional conditions.

**Drug Access:** Through licensed Recreational and Medical Marijuana Dispensaries.

**ID Cards Issued:** Issued by the Department of Public Health and Environment.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

*Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.*

## **Connecticut**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, glaucoma, HIV, AIDS, Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, cachexia, wasting syndrome, Crohn's disease, PTSD, or any medical condition, medical treatment or disease approved by the Department of Consumer Protection.

**Drug Access:** Through licensed dispensary facilities.

**ID Cards Issued:** Issued by the Department of Consumer Protection.

**Employer Exemption or Obligations:** *See below.*

**Recent Court Decision:** *Noffsinger v. SSC Niantic Operating Co., LLC, d/b/a Bride Brook Health & Rehab. Ctr.*, No. 3:16-cv-01938 (D. Conn. Aug. 8, 2017).

The U.S. District Court for the District of Connecticut has held that Federal law does not preempt the Connecticut medical marijuana statute's prohibition on employers' firing or refusing to hire qualified medical marijuana patients, even if they test positive on an employment-related drug test. This is a case of first impression that may have potentially sweeping implications for Connecticut state law and the federal Controlled Substances Act.

The Court also held that

(i) the Connecticut Palliative Use of Marijuana Act (PUMA) provides a private right of action for individuals claiming to be discriminated against as a result of their qualifying patient status;

(ii) that PUMA's anti-discrimination provision does not violate the Equal Protection Clause; and,

(iii) that employers regulated by federal laws are not exempt from the state statute's discrimination prohibitions.

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## Delaware

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, glaucoma, HIV, AIDS, Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, cachexia, wasting syndrome, Crohn's disease, PTSD, or any medical condition, medical treatment or disease approved by the Department of Consumer Protection.

**Drug Access:** Through licensed Compassion Centers.

**ID Cards Issued:** Issued by the Department of Health and Social Services.

**Employer Exemption or Obligations:** 2012 Delaware Code, Title 16 - Health and Safety.

CHAPTER 49A. THE DELAWARE MEDICAL MARIJUANA ACT

§ 4905A. Discrimination prohibited.

(3) Discrimination is prohibited unless a failure to do so would cause the **employer** to lose a monetary or licensing-related benefit under federal law or federal regulations, **an employer MAY NOT discriminate against a person in hiring, termination, or any term or condition of employment**, or otherwise penalize a person, if the discrimination is based upon either of the following:

- a. The person's status as a cardholder; or
- b. A registered qualifying patient's **positive drug test for marijuana components** or metabolites, unless the patient used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment.

*Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.*

## **The District of Columbia (D.C.)**

**Recreational Use:** Yes

**Home Cultivation:** Yes

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** Any condition for which treatment with medical marijuana would be beneficial, as determined by the patient’s physician.

**Drug Access:** Through the five operational dispensaries and eight operational cultivation centers. Dispensaries must have a sliding scale of prices for low-income patients.

**ID Cards Issued:** Issued by the Department of Health.

### **Employer Exemption or Obligations:**

§ 32–931. Restriction on pre-employment marijuana testing.

(a) An employer may only test a prospective employee for marijuana use after a conditional offer of employment has been extended, unless otherwise required by law.

(b) Nothing in this chapter shall be construed to:

- (1) Affect employee compliance with employer workplace drug policies;
- (2) Require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace or at any time during employment;
- (3) Interfere with federal employment contracts; or
- (4) Prevent the employer from denying a position based on a positive test for marijuana.

(c) For the purposes of this section, the term:

- (1) “Employer” shall have the same meaning as provided in § 32-1101(6).
- (2) “Prospective employee” means any individual applying for employment with an employer.

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## **Florida**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** Debilitating Medical Condition such as, cancer, epilepsy, glaucoma, HIV, AIDS, PTSD, ALS, Crohn's disease, Parkinson's disease, multiple sclerosis, or other debilitating medical conditions of the same kind or class as or comparable to those enumerated, and for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

**Drug Access:** Once a patient's "Order" is submitted by their physician into Florida's Medical Marijuana Use Registry, the patient or Caregiver can purchase their medicine at any of Florida's licensed Medical Marijuana Treatment Centers.

**ID Cards Issued:** Issued by the Department of Health

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

*Employers should be aware of the Medical Marijuana laws in this state when implementing a drug-free workplace policy*

## **Georgia**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** No

**CBD:** Yes

**Qualifying Medical Condition(s):** cancer, when the disease has reached end stage, or the treatment produces related wasting illness, recalcitrant nausea and vomiting; seizure disorders related to diagnosis of epilepsy or trauma-related head injuries, ALS, severe or end-stage multiple sclerosis, severe or end-stage Parkinson's disease, severe or end-stage sickle cell disease, Crohn's disease and mitochondrial disease.

**Drug Access:** Georgia's law does not address how low-THC oil is made, purchased or shipped. The law only creates a procedure to ensure qualified persons will be protected from prosecution for having it in their possession. The Georgia Department of Public Health does not prescribe or dispense low-THC oil.

**ID Cards Issued:** Department of Public Health

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

## **Hawaii**

**Recreational Use:** No

**Home Cultivation:** Yes

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** Severe pain, cachexia, severe nausea, seizures, PTSD, rheumatoid arthritis, lupus, epilepsy, and multiple sclerosis or severe and persistent muscle spasms. The Health Department can approve additional conditions.

**Drug Access:** Once medical marijuana can be legally sold, it will be available through licensed dispensaries.

**ID Cards Issued:** Department of Public Health.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

*Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.*

## **Illinois**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** agitation of Alzheimer’s disease, HIV, AIDS, ALS, Arnold-Chiari malformation, Cancer, causalgia, chronic inflammatory demyelinating polyneuropathy, Crohn’s disease, CRPS (complex regional pain syndrome Type II), dystonia, fibrous dysplasia, glaucoma, hepatitis C, hydrocephalus, hydromyelia, interstitial cystitis, Lupus, multiple sclerosis, muscular dystrophy, myasthenia gravis, myoclonus, nail-patella syndrome, neurofibromatosis, Parkinson’s disease, Post-Concussion Syndrome, PTSD, reflex sympathetic dystrophy, residual limb pain, rheumatoid arthritis, seizures (including those characteristic of epilepsy), severe fibromyalgia, Sjogren’s syndrome, spinal cord disease (including but not limited to arachnoiditis), spinal cord injury is damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, spinocerebellar ataxia, syringomyelia, Tarlov cysts, Tourette syndrome, traumatic brain injury, cachexia/wasting syndrome

**Drug Access:** Registered patients and caregivers can legally purchase medical marijuana through licensed dispensaries.

**ID Cards Issued:** Department of Public Health.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## **Indiana**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** No

**CBD:** Yes

**Qualifying Medical Condition(s):** “Treatment-resistant epilepsy” – means: Dravet syndrome, Lennox-Gastaut syndrome, another form of epilepsy in a patient who has not responded to at least two of the epilepsy treatment options that have been provided in good faith.

**Drug Access:** No means of access to CBD.

**ID Cards Issued:** Department of Health.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

## **Iowa**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** No

**CBD:** Yes

**Qualifying Medical Condition(s):** cancer (with severe or chronic pain, nausea or severe vomiting, cachexia or severe wasting), multiple sclerosis with severe and persistent muscle spasms, seizures, AIDS, HIV, Crohn's disease, ALS, any terminal illness, with a probable life expectancy of under one year (if the illness or its treatment produces one or more of the following: severe or chronic pain, nausea or severe vomiting, cachexia or severe wasting), Parkinson's disease and untreatable pain.

**Drug Access:** No means of access to CBD.

**ID Cards Issued:** Department of Public Health.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

## **Kentucky**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** No

**CBD:** Yes

**Qualifying Medical Condition(s):** Patients diagnosed with intractable seizure disorders may qualify for medical CBD in Kentucky. Patients may only gain access to CBD if they receive a written order from a doctor practicing at a hospital affiliated with a state university that has a medical school. There is no means of access to CBD in the state, and prescribing it would be federally illegal.

**Drug Access:** No means of access to CBD.

**ID Cards Issued:** Department of Public Health.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

## **Louisiana**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Legislation Passed

**CBD:** N/A

**Qualifying Medical Condition(s):** patients with chemotherapy-related symptoms, spastic quadriplegia, cachexia or wasting syndrome, seizure disorders, epilepsy, spasticity, severe muscle spasms, including those characteristic of Crohn's disease or multiple sclerosis Crohn's disease, muscular dystrophy, multiple sclerosis, cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or a chronic or debilitating disease or medical condition or its treatment that produces cachexia or wasting syndrome.

**Drug Access:** 10 pharmacies TBD.

**ID Cards Issued:** Department of Public Health.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

*Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.*

## Maine

**Recreational Use:** Yes

**Home Cultivation:** Yes

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** Patients with chemotherapy-related symptoms, spastic quadriplegia, cachexia or wasting syndrome, seizure disorders, epilepsy, spasticity, severe muscle spasms, Crohn's disease, muscular dystrophy, multiple sclerosis, cancer, glaucoma, HIV, AIDS, or a chronic or debilitating disease or medical condition or its treatment that produces cachexia or wasting syndrome.

**Drug Access:** Through non-profit dispensaries.

**ID Cards Issued:** Voluntary - Division of Public Health Operations.

**Employer Exemption or Obligations:** Maine Legislature enacted the Maine Medical Use of Marijuana Act (MMUMA) in 2009. Applicants and/or employees who are a "qualifying patients" and/or a "primary caregivers" cannot be discriminated against by an employer "solely for that person's status as a qualifying patient or primary caregiver, unless failing to do so would put the [employer] in violation of Federal law or lose a Federal contract or funding."

### **As of September 2017 Maine Laws...**

- Do not require employers to accommodate an applicant and/or an employee by allowing them to ingest medical marijuana while at work;
- Do not require an employer to allow an employee to work under the influence of medical marijuana;
- Do not require an employer to forego any safety precautions consistent with other controlled substances simply because the ingestion of medical marijuana was "medicinal."
- Do not prohibit an employer from taking disciplinary action against an employee who has ingested medical marijuana while at work and/or is impaired by medical marijuana at work to the same extent that an employer would discipline other employees who use other controlled substance(s) or alcohol at work and/or who are impaired by controlled substance(s) or alcohol at work.

### **Effective February 2018 - Maine's Marijuana Legalization Act states:**

*"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."*

If this language does not change by February 2018, then the Maine Department of Labor may recommend that employers who perform drug screenings do not test for marijuana. There's nothing in the marijuana legalization statute that says that employers cannot drug test, it just states they cannot refuse to hire an applicant for recreational marijuana use.

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## **Maryland**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Legislation Passed

**CBD:** N/A

**Qualifying Medical Condition(s):** Any severe condition “for which other medical treatments have been ineffective . . . if the symptoms reasonably can be expected to be relieved by” cannabis.

**Drug Access:** Through the state’s licensed dispensaries.

**ID Cards Issued:** Optional through the Maryland Medical Cannabis Commission.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

*Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.*

## **Massachusetts**

**Recreational Use:** Yes - TBD

**Home Cultivation:** No

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, glaucoma, HIV, AIDS, hepatitis C, ALS, Crohn's disease, Parkinson's disease, and multiple sclerosis (when such diseases are debilitating), and other debilitating conditions as determined in writing by a qualifying patient's certifying physician." "Debilitating" is defined in the Regulations as "causing weakness, cachexia, wasting syndrome, intractable pain, or nausea, or impairing strength or ability, and progressing to such an extent that one or more of a patient's major life activities is substantially limited." If a patient has had a diagnosis of a debilitating medical condition in the past, but does not have an active condition (unless the symptoms related to such condition are mitigated by the medical use of marijuana), and is not undergoing treatment for such a condition, the patient is not to be considered to be suffering from a debilitating medical condition.

**Drug Access:** Through the state's approved dispensaries.

**ID Cards Issued:** Executive Office of Health and Human Services.

**Employer Exemption or Obligations:** In July of 2017, the Massachusetts Supreme Judicial Court unanimously ruled in *Barbuto v. Advantage Sales and Marketing, LLC*, that workers who have been terminated by their employer because of failed drug tests "may seek a remedy through claims of handicap discrimination." The ruling failed to state that holding such firings qualify as "wrongful termination." The court ruled that granting exemptions to drug testing for medical marijuana patients represented a "reasonable accommodation" for employers to make. Massachusetts employees who are "qualified handicapped persons" under the state's disability discrimination law and who legally consume marijuana under the state's medical marijuana act may now bring a claim against an employer that denies them "the right or privilege" of a reasonable accommodation for their disability.

The court was careful to say that the decision did not mean that the employee would ultimately win her case on her claim. Her employer still had an opportunity to prove that using marijuana would impose an undue hardship on performance or safety, or would cause her employer to violate contractual or statutory obligations.

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## **Michigan**

**Recreational Use:** No

**Home Cultivation:** Yes

**Medical Use:** Legislation Passed

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, glaucoma, HIV, AIDS, hepatitis C, ALS, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions. A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome, severe and chronic pain, severe nausea, seizures, including but not limited to those characteristic of epilepsy, or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis. Any other medical condition or its treatment approved by the department

**Drug Access:** Through the state's licensed dispensaries once approved.

**ID Cards Issued:** Licensing and Regulatory Affairs.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

*Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.*

## **Minnesota**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer-associated with severe/chronic pain, nausea or severe vomiting, or cachexia or severe wasting, glaucoma, HIV, AIDS, Tourette syndrome, ALS, seizures, including those characteristics of epilepsy, severe and persistent muscle spasms, including those characteristics of multiple sclerosis, inflammatory bowel disease, including Crohn's disease, terminal illness, with a probable life expectancy of less than one year, intractable pain and PTSD.

**Drug Access:** Through the state's licensed dispensaries.

**ID Cards Issued:** Department of Health.

**Employer Exemption or Obligations:** Employers may not discriminate against an individual in hiring, firing, or a condition of employment based on the fact that the person is registered in the medical marijuana program. Employers may not discriminate against a patient who tested positive for marijuana use. If an employee is required to be drug tested, the employee may provide proof of enrollment in the State's registry as a valid reason for testing positive for marijuana. The law does not prevent an employer from taking action against an employee who possessed marijuana or was under the influence of marijuana on the job during work hours. An employer who would lose a license, sacrifice financial benefits or violate a federal law by keeping a medical marijuana patient employed, would not be required to continue the employment of the patient.

*Employers should be aware of the Medical Marijuana laws in this state when implementing a drug-free workplace policy*

## **Mississippi**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** No

**CBD:** Yes

**Qualifying Medical Condition(s):** Debilitating epileptic conditions.

**Drug Access:** through the state's National Center for Natural Products Research.

**ID Cards Issued:** Patients must receive medical recommendations by a physician from the University of Mississippi Medical Center to participate in the clinical trial.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

## **Missouri**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** No

**CBD:** Yes

**Qualifying Medical Condition(s):** debilitating epileptic conditions.

**Drug Access:** Through the state's Cannabidiol Oil Care Centers.

**ID Cards Issued:** Department of Health and Senior Services.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

## **Montana**

**Recreational Use:** No

**Home Cultivation:** Yes

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, HIV, AIDS, glaucoma, cachexia, intractable nausea or vomiting, seizure disorder, multiple sclerosis, Crohn's disease, painful peripheral neuropathy, hospice care admittance, PTSD, or in some cases, severe pain or spasms.

**Drug Access:** Through the state's licensed Providers.

**ID Cards Issued:** Department of Public Health and Human Services.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

*Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.*

## **Nevada**

**Recreational Use:** Yes

**Home Cultivation:** \*Yes

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, HIV, AIDS, glaucoma, cachexia, intractable nausea or vomiting, seizure disorder, multiple sclerosis, Crohn's disease, painful peripheral neuropathy, hospice care admittance, PTSD, or in some cases, severe pain or spasms.

**Drug Access:** Through the state's licensed dispensaries.

**ID Cards Issued:** Department of Health and Human Services.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law. The Nevada Medical Marijuana Act states that employers are not required to accommodate employees who use medical marijuana.

*\*Allowed for patients who live further than 25 miles away from the nearest dispensary.*

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## **New Hampshire**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, glaucoma, HIV, AIDS, hepatitis C, ALS, muscular dystrophy, Crohn's disease, multiple sclerosis, chronic pancreatitis, spinal cord injury or disease, traumatic brain injury, epilepsy, lupus, Parkinson's disease, Alzheimer's disease, ulcerative colitis, PTSD, Ehlers-Danlos syndrome, or one or more injuries or conditions that has resulted in one or more qualifying symptoms. A severely debilitating or terminal medical condition or its treatment that has produced at least one of the following: elevated intraocular pressure, cachexia, chemotherapy-induced anorexia, wasting syndrome, agitation of Alzheimer's disease, severe pain that has not responded to previously prescribed medication or surgical measures or for which other treatment options produced serious side effects, constant or severe nausea, moderate to severe vomiting, seizures, or severe, persistent muscle spasms, moderate to severe chronic pain. Severe pain that has not responded to previously prescribed medication or surgical measures or for which other treatment options produced serious side effects.

**Drug Access:** Through the state's nonprofit alternative treatment centers.

**ID Cards Issued:** Department of Health and Human Services.

**Employer Exemption or Obligations:** New Hampshire's Public Health statute "Use of Cannabis for Therapeutic Purposes" does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

The law shall not exempt any person from arrest or prosecution for being under the influence of cannabis while in his or her place of employment, without the written permission of the employer or operating heavy machinery or handling a dangerous instrumentality.

The law does not allow for the possession of cannabis in a place of employment, without the written permission of the employer.

The law shall in no way limit an employer's ability to discipline an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis.

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## **New Jersey**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** amyotrophic lateral sclerosis, multiple sclerosis, terminal cancer, muscular dystrophy, inflammatory bowel disease, including Crohn's disease, terminal illness, if the physician has determined a prognosis of less than 12 months of life.

*The following conditions apply, if resistant to, or if the patient is intolerant to, conventional therapy: seizure disorder, including epilepsy, intractable skeletal muscular spasticity, glaucoma and PTSD.*

*The following conditions apply, if severe or chronic pain, severe nausea or vomiting, cachexia or wasting syndrome results from the condition or treatment thereof: HIV, AIDS and Cancer.*

**Drug Access:** Through the state's alternative treatment centers.

**ID Cards Issued:** Department of Health and Senior Services.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

The New Jersey Compassionate Use Medical Marijuana Act states that nothing in this act shall be construed to require a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana, or an employer to accommodate the medical use of marijuana in any workplace.

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## **New Mexico**

**Recreational Use:** No

**Home Cultivation:** Yes

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** ALS, cancer, Crohn's disease, epilepsy, glaucoma, hepatitis C Infection currently receiving antiviral treatment, HIV, AIDS, Huntington's disease, hospice care, inclusion body myositis, inflammatory autoimmune-mediated arthritis, intractable nausea/vomiting, multiple sclerosis, damage to the nervous tissue of the spinal cord, with (proof of objective neurological indication of intractable spasticity required), painful peripheral neuropathy, Parkinson's disease, PTSD, severe chronic pain, severe anorexia/cachexia, spasmodic torticollis(cervical dystonia) and ulcerative colitis.

**Drug Access:** Through the state's Licensed Nonprofit Producers.

**ID Cards Issued:** Department of Health.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

Even though New Mexico has a state medical marijuana law, employers may prohibit use of medical marijuana in the workplace. *(NM Stat. Sec. 30-31C-1)*

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## **New York**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, positive status for HIV or AIDS, ALS, Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, inflammatory bowel disease, neuropathy, chronic pain as defined by 10 NYCRR §1004.2(a)(8)(xi), or Huntington's disease. Patients must also have one of the following associated or complicating conditions: cachexia or wasting syndrome, severe or chronic pain, severe nausea, seizures and severe or persistent muscle spasms.

**Drug Access:** Through the state's Licensed dispensaries.

**ID Cards Issued:** Department of Health.

**Employer Exemption or Obligations:** New York's medical marijuana act, known as the Compassionate Care Act (S7923/A6357-E) was enacted in June 2014. Qualified patients under the law who have been certified by a healthcare provider to use medical marijuana can register with the New York State Department of Health and receive a patient medical marijuana identification card.

- Employers may not discriminate against an employee for their medical marijuana use.
- The law states that a certified patient is the equivalent of having a disability for purposes of New York's anti-disability discrimination laws.
- Employers are not required to accommodate the use in any way of marijuana in any workplace or any employee working while under the influence of marijuana.
- Employers may continue to enforce their drug-testing policies prohibiting the possession or consumption of marijuana during working hours and to discipline any employee whose job performance is impaired because of the use of marijuana.

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## **North Dakota**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** Terminal illness, cancer, HIV, AIDS, hepatitis C, ALS, PTSD, Alzheimer's, dementia, Crohn's disease, fibromyalgia, spinal stenosis, glaucoma, epilepsy, and any condition that produces wasting and debilitating pain.

**Drug Access:** TBD - Through the state's licensed compassionate care centers.

**ID Cards Issued:** Department of Health.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

*Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.*

## Ohio

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** AIDS, HIV, amyotrophic lateral sclerosis, Alzheimer's disease, cancer, chronic traumatic encephalopathy, Crohn's disease, epilepsy or another seizure disorder, fibromyalgia, glaucoma, hepatitis C, inflammatory bowel disease, multiple sclerosis, pain that is either chronic and severe or intractable, Parkinson's disease, PTSD, sickle cell anemia, spinal cord disease or injury, Tourette's syndrome, traumatic brain injury and ulcerative colitis.

**Drug Access:** TBD - Through the state's licensed dispensaries

**ID Cards Issued:** Through the Board of Pharmacy

**Employer Exemption or Obligations:** Ohio House Bill 523 was signed by Ohio Governor John Kasich in June 2016 and went into effect on September 8, 2016. The law permits employers to terminate employees for violations of any drug-free or zero tolerance policies. Among other provisions, the new law does not:

- (1) Require employers to permit or accommodate an employee's use, possession, or distribution of medical marijuana;
- (2) Prohibit an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms and conditions, or privileges or employment because of that person's use, possession, or distribution of marijuana;
- (3) Prohibit an employer from establishing and enforcing a drug testing policy, drug-free workplace policy; or zero-tolerance drug policy;
- (4) Interfere with any federal restrictions on employment;
- (5) Permit an employee or applicant to file suit against an employer for discrimination, retaliation, or otherwise taking an adverse employment action with respect to hire, tenure, terms and conditions, or privileges of employment related to medical marijuana; and
- (6) Affect the authority of the administrator of workers' compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program established by law.

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## Oregon

**Recreational Use:** Yes

**Home Cultivation:** Yes

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, glaucoma, a degenerative or pervasive neurological condition, HIV, AIDS, PTSD, a medical condition or treatment for a medical condition that produces one or more of the following: cachexia (a weight-loss disease that can be caused by HIV or cancer), severe pain, severe nausea, seizures, including but not limited to seizures caused by epilepsy, persistent muscle spasm, including but not limited to spasms caused by multiple sclerosis.

**Drug Access:** Licensed dispensaries & Licensed retail stores.

**ID Cards Issued:** Department of Human Services.

**Employer Exemption or Obligations:** The Oregon Medical Marijuana Act allows individuals with chronic pain conditions to use medical marijuana, as long as the treatment is recommended by a physician and the patient has registered with the state for use. The Act states the following:

**475.340 Limitations on reimbursement of costs and employer accommodation.**

Nothing in ORS 475.300 to 475.346 shall be construed to require:

- (1) A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or
  - (2) An employer to accommodate the medical use of marijuana in any workplace.
- [1999 c.4 §16]

The law does not amend or affect any federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## **Pennsylvania**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** ALS, autism, Cancer, Crohn's disease, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, glaucoma, HIV, AIDS, Huntington's disease, inflammatory bowel disease, intractable seizures, multiple sclerosis, neuropathies, Parkinson's disease, PTSD, severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain in which conventional therapeutic intervention and opiate therapy is contraindicated or ineffective and sickle cell anemia.

**Drug Access:** Licensed dispensaries.

**ID Cards Issued:** Department of Health.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

*Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.*

## **Rhode Island**

**Recreational Use:** No

**Home Cultivation:** No

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer or the treatment of this condition, glaucoma or the treatment of this condition, HIV or the treatment of this condition, AIDS or the treatment of this condition, Hepatitis C or the treatment of this condition. A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome, severe, debilitating, chronic pain, severe nausea, seizures, including but not limited to those characteristic of epilepsy, severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis or Crohn's disease and agitation related to Alzheimer's disease.

**Drug Access:** Compassion Centers

**ID Cards Issued:** Department of Health

**Employer Exemption or Obligations:** In May of 2017, Rhode Island's Superior Court ruled employers cannot refuse to hire a medical marijuana cardholder, even if the individual admittedly would not pass the employer's pre-employment drug test required of all applicants. *Callaghan v. Darlington Fabrics Corp., et al.*, No. PC-2014-5680 (R.I. Super. Ct., May 23, 2017). Even though the court agreed that employers are not required to tolerate employees who report for work under the influence of marijuana, it ruled that the Rhode Island medical marijuana law, the Hawkins-Slater Act expressly states that an employer may not refuse to employ a person due to his or her status as a medical marijuana cardholder. Therefore, the Superior Court ruled the employer violated the Act in refusing to hire the applicant even though she admittedly could not pass the pre-employment drug test. The decision does not amend or affect any federal law regarding employment matters, or exempt an individual from federal law. The Hawkins-Slater Act, which states that "no school, employer, or landlord may refuse to enroll, employ, or lease to, or otherwise penalize, a person solely for his or her status as a cardholder" and "nothing in this chapter shall be construed to require an employer to accommodate the medical use of marijuana in any workplace."

***Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.***

## **Vermont**

**Recreational Use:** No

**Home Cultivation:** Yes

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, AIDS, HIV, multiple sclerosis, glaucoma, Crohn's disease, Parkinson's disease, or the treatment of these conditions, if the disease or the treatment results in severe, persistent, and intractable symptoms, PTSD, provided the Department confirms the applicant is undergoing psychotherapy or counseling with a licensed mental health care provider, or a disease or medical condition or its treatment that is chronic, debilitating, and produces one or more of the following intractable symptoms: cachexia or wasting syndrome, chronic pain, severe nausea or seizures.

**Drug Access:** Nonprofit dispensaries.

**ID Cards Issued:** Department of Public Safety.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

*Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.*

## Washington

**Recreational Use:** Yes

**Home Cultivation:** Yes

**Medical Use:** Yes

**CBD:** N/A

**Qualifying Medical Condition(s):** cancer, HIV, multiple sclerosis, epilepsy or other seizure disorder, spasticity disorders, intractable pain, glaucoma, either acute or chronic, Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications. Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications. Diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications. Chronic renal failure requiring hemodialysis, PTSD and traumatic brain injury.

Humanitarian compassion necessitates that the decision to use marijuana by patients with terminal or debilitating medical conditions is a personal, individual decision, based upon their healthcare practitioner's professional medical judgment and discretion.

**Drug Access:** Medically Endorsed Stores.

**ID Cards Issued:** Voluntary through the Department of Health.

**Employer Exemption or Obligations:** The law does not amend or affect any state or federal law regarding employment matters, or exempt an individual from federal law. There are no employment protections under the law.

*Employers should be aware of the medical marijuana laws in this state when implementing a Drug-Free Workplace Policy.*

---

## APPENDIX A

---

### **State Medical Marijuana Programs**

For more information on Medical Marijuana Programs in your state, please visit: <http://www.kklaw.com/mmjstates> or click [here](#).

## **A Builder's Guidebook: Marijuana in the Workplace**

Copyright © 2017 by Kelley Kronenberg, P.A.

All rights reserved. Except as permitted under U.S. Copyright Act of 1976, no part of this publication may be reproduced, distributed, or transmitted in any form or by any means, or stored in a database or retrieval system, without the prior written permission of the publisher.