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WEED + THE WORKPLACE:

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RAPIDLY EVOLVING STATE MARIJUANA LAWS

Once considered a taboo and illicit substance, marijuana has undergone a dramatic transformation over the past quarter century to now being legal (under state laws) in some form throughout most of the United States. As this trend of legalization continues, more and more states have implemented laws to protect workers from adverse employment actions due to their lawful use of medical and/or recreational marijuana, including while off-duty. And certain states even require employers to accommodate medical marijuana use. Given the varying state-specific marijuana laws and costly discrimination claims at play, utilizing a one-size-fits-all approach concerning employee marijuana usage poses a significant risk for multi-state employers.

The Era of Legalization and Expanded Employment Protections

Despite still being classified as a Schedule I drug at the federal level, marijuana for medical use is currently legal in 39 states, four U.S. territories (including Puerto Rico), and the District of Columbia. The recreational use of marijuana has been legalized in 24 states, three U.S. territories, and the District of Columbia.

Many states with legal medical marijuana prohibit employers from discriminating against employees and applicants based solely on their status as a registered medical marijuana patient or for testing positive for marijuana on a drug test. An increasing number of states (12 to date) have gone a step further by making it unlawful for employers to discriminate against a person in hiring, termination, or any other employment term/condition because of the person's off-duty marijuana use. And more states are passing laws, or their courts are interpreting existing laws, to require employers to accommodate medical marijuana users.

The table below provides an overview of states that, as of April 2025, have legalized medical and/or recreational marijuana and have certain legal protections (through legislation or judicial interpretation) for employees who lawfully use marijuana:

State	Medical/ Recreational	Duty to Accommodate	Anti-Discrimination (Medical Use)	Anti-Discrimination (Off-Duty Use)
Alabama	Medical			
Alaska	Medical + Recreational			
Arizona	Medical + Recreational		X	
Arkansas	Medical		X	
California	Medical + Recreational		X	X
Colorado	Medical + Recreational			
Connecticut	Medical + Recreational		X	X
Delaware	Medical + Recreational		X	
District of Columbia	Medical + Recreational		X	X
Florida	Medical			
Hawaii	Medical			
Illinois	Medical + Recreational		X	X
Kentucky	Medical			
Louisiana	Medical		X*	
Maine	Medical + Recreational		X	X
Maryland	Medical + Recreational			
Massachusetts	Medical + Recreational	X	X	
Michigan	Medical + Recreational			
Minnesota	Medical + Recreational		X	X

State	Medical/ Recreational	Duty to Accommodate	Anti-Discrimination (Medical Use)	Anti-Discrimination (Off-Duty Use)
Mississippi	Medical			
Missouri	Medical + Recreational		X	X
Montana	Medical + Recreational		X	X
Nebraska	Medical			
Nevada	Medical + Recreational	X	X	X
New Hampshire	Medical			
New Jersey	Medical + Recreational	X	X	X
New Mexico	Medical + Recreational		X	
New York	Medical + Recreational	X	X	X
North Dakota	Medical			
Ohio	Medical + Recreational			
Oklahoma	Medical		X	
Oregon	Medical + Recreational			
Pennsylvania	Medical		X	
Puerto Rico	Medical		X	
Rhode Island	Medical + Recreational		X	X
South Dakota	Medical		X	
Virginia	Medical + Recreational		X	
Utah	Medical			
Vermont	Medical + Recreational		X	
Washington	Medical + Recreational		X	X
West Virginia	Medical		X	

*Louisiana law applies only to state employers.

Safety Still Comes First

Despite the lawful use of marijuana becoming more widely accepted and explicitly protected in some states, employers are not required to permit employees to use or possess marijuana at work. Even in states that protect off-duty marijuana use, employers are entitled to maintain a safe workplace by enforcing policies that prohibit employees from performing work while under the influence of marijuana or from consuming marijuana during working hours or on company property.

Additionally, numerous states with marijuana-related employment discrimination laws and/or laws prohibiting pre-employment marijuana testing have exceptions for “safety-sensitive” positions (as defined by applicable state law). For example, Arkansas law allows employers to bar current users of medical marijuana from safety-sensitive jobs, even if those employees (or applicants) are never in possession or under the influence at work.

BEST PRACTICES FOR MULTI-STATE EMPLOYERS

Audit Existing Policies and Procedures

Review and revise existing policies and procedures to ensure they align with applicable laws concerning recreational marijuana use, drug testing, and the use of the results of any drug test. Medical marijuana policies should communicate that impairment at work is expressly prohibited and, in applicable states, designate which jobs are safety-sensitive (written job descriptions are also an ideal place for such designations).

Do Not Ignore Marijuana-Related Accommodation Requests

Although the Americans with Disabilities Act (ADA) does not require employers to accommodate illegal drug use, employers may have an obligation under the ADA and/or state law to accommodate an employee who uses medical marijuana. Given that a medical marijuana card may indicate the presence of an underlying disability, ignoring or automatically denying a marijuana-related accommodation request could be a costly misstep for an employer. Train HR staff and managers to engage in interactive processes with employees who use medical marijuana as they would any non-user employee.

Focus on Physical Evidence of Impairment

While working under the influence of marijuana is universally not permitted, employers currently do not have a drug testing method that can confirm a person is under the influence of marijuana at the time of the test. And because marijuana can linger in the human body for up to 30 days, a positive drug test is an unreliable indicator of present impairment. As a result, an employer may open itself up to a discrimination claim by disciplining or terminating an employee based solely on a positive drug test. For example, under Arkansas law, a positive drug screen is not enough to discipline or terminate the employment of a certified medical marijuana user. There must be some other indication of impairment.

To combat the question of present impairment, especially in states where off-duty marijuana use is protected, employers should rely on observed impaired behaviors when taking any adverse employment action. Employers can establish a monitoring system by training managers on how to observe potential impairment and the steps to take if impairment is suspected, which should include carefully documenting the physical evidence of marijuana use or impairment in the workplace and/or during working hours. In some states, an employer may designate a “Workplace Impairment Recognition Expert” to receive specialized training in identifying when a person is impaired by marijuana.

Monitor Technological and Legal Developments

Stay ahead of the curve by monitoring technological developments in the marijuana impairment testing market for well-supported and well-established inventions that can reliably detect present impairment. Finally, closely follow marijuana-related federal and state legislation, as well as local ordinances, and consult with outside counsel as necessary to respond to any changes.