

# **MODERN METHODS OF ADDRESSING MEDICAL AND RECREATIONAL MARIJUANA IN A RAPIDLY CHANGING LANDSCAPE**

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## **I. Introduction**

Marijuana prohibition in the United States began 80 years ago when the federal government banned the sale, cultivation, and use of the cannabis plant. It continues to remain illegal under federal law today. However, in recent years marijuana legalization has swept the United States and the globe at a rapid rate.

In 2018 alone, Vermont became the first state to legalize marijuana through its legislature, rather than by ballot initiative; Canada legalized marijuana nationwide, becoming the first G7 country to do so; and Mexico's Supreme Court ruled that marijuana prohibition is unconstitutional. Currently in the United States, 10 states and the District of Columbia allow recreational marijuana for adults over 21, and 33 states allow medical marijuana. These numbers are expected to continue to grow over the next few years as societal and political perspectives on cannabis continue to shift in favor of legalization. All signs point to the eventual legalization of marijuana at the federal level in the United States.

Despite this shift in perspective, marijuana still remains an illegal Schedule I drug under the federal Controlled Substances Act – in direct contrast with legalized marijuana at the state level. Although federal law is superior to state law, businesses must comply with both – even if federal and state laws conflict with one another. The chronic dispute between state and federal marijuana laws has left many employers confused about how to handle marijuana use in the

workplace. With federal legalization on the horizon, the issue has become hazier than ever. We are here to clear the smoke.

## **II. Marijuana In The Workplace: What Can-a-Business Do?**

Marijuana laws are constantly evolving and continue to be challenged in courts across the country. This makes it difficult for employers to keep up with the requirements and limitations of legalized marijuana under both state and federal law. Every state has differing laws and regulations regarding marijuana use, and the majority of recent court decisions in various states indicate that the haze surrounding cannabis in the workplace will not be resolved anytime soon. When reviewing your company's compliance with various marijuana laws and determining the best policies with regards to marijuana in the workplace, there are three key points employers should remember:

- **Understand Various State Marijuana Laws.** It is important for employers to understand their rights and obligations—and those of applicants and employees—under state-specific marijuana laws in every state where the company does business. Each state has different requirements, and those requirements can vary dramatically. The State Marijuana Laws Appendix at the end of this paper serves as a great resource for up-to-date legal guidance in this ever-changing area of the law.
- **Understand Your Business Needs.** Every business is different and the business needs can substantially impact a company's policy and practice with respect to marijuana. Some of the needs you might consider include: whether you have safety

sensitive positions, whether you are a federal government contractor, your company culture, and your need for competitive talent.

- **Maintain a Drug-Free Workplace.** Because marijuana remains illegal under federal law, employers can strictly prohibit marijuana at work. Employees can be disciplined, and even terminated, for coming to work under the influence, possessing marijuana on company premises, or using marijuana while at work – even in states where marijuana is legal. Drug testing requirements and medical marijuana accommodation obligations vary amongst the states, and must be considered, but drug-free workplace policies are also essential to help protect your business and manage employees in the wake of legalized marijuana.

Although there is no one, clear-cut answer for how to handle marijuana in the workplace, there are four major marijuana workplace issues to consider when ensuring compliance with marijuana laws and fostering a drug-free workplace environment: handling legal-off duty use of recreational marijuana, accommodation of medical marijuana, applicant and employee drug-testing, and employee discipline.

### **III. Recreational Marijuana in the Workplace**

Every state that has passed a recreational marijuana law strictly regulates use of the drug by, for example, banning its use in public, regulating where it can be purchased and limiting how much can be grown at home. Importantly, no state law forces employers to tolerate on-the-job use.

Employers, however, have to be prepared for the fact that it is now much easier to obtain marijuana—and in new forms. Instead of smoking, people are using oils, creams, and edibles that they bought at a dispensary. As a result, it has become more difficult to identify marijuana in the

workplace. Thus, employers' must be mindful of changes in performance and indicators of intoxication to minimize the effects of legalized recreational marijuana on the workplace.

Many employers are increasingly treating recreational marijuana like recreational alcohol, with the additional understanding that unlike alcohol, marijuana is still illegal under federal law. Therefore, as a general premise, employers consider maintaining drug-free workplace policies. This means that recreational marijuana users can be disciplined being intoxicated at work and workplace policies should clearly state that employees may not be drunk or high at work. Employees need to know that they cannot have an edible at lunch and come back to the office.

Also, many states have laws that provide protections for engaging in legal off-duty conduct. These laws prohibit employers from considering an employee's lawful conduct outside of work for purposes of making employment decisions. For example, in states where recreational marijuana is legal, the consumption of marijuana outside of work hours could be considered lawful off-duty conduct, and an employer could be prohibited from using an employee's positive drug test for purposes of making an adverse employment decision.

To date only one state has addressed the issue. A court in Colorado held in 2015 that because marijuana is still federally illegal, off-duty use was *not* "legal" conduct, but rather "illegal" off duty conduct.<sup>1</sup> Since 2015, however, states have become increasingly pro-marijuana and we anticipate that similar cases pending in other states may hold otherwise.

Furthermore, there are several states that outright protections to registered *medical marijuana* users and require that employers engage in an interactive process to see if a reasonable accommodation can be made. However even though these states have laws that protect an employee's medical marijuana use, there are no comparable protections for an employee's

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<sup>1</sup> *Coats v. Dish Network, LLC*, 350 P.3d 849 (2015)

*recreational* marijuana use. Because this is an area of the law that will continue to be tested in the courts, particularly in states with statutes protecting employees who engage in “lawful” off-duty conduct, employers should carefully consider state-specific marijuana laws when developing personnel policies with regards to recreational marijuana.

#### **IV. Accommodation Of Medical Marijuana**

Accommodating employees’ use of medical marijuana is a cause for concern for many employers, especially as noted, in states where recreational marijuana is legal. While no state requires employers accommodate an employee’s on-site use of medical marijuana, it should come as no surprise that the states are split as to whether employers need to reasonably accommodate an employee’s use of medical marijuana outside of work.

##### **A. States Where Employers Are Not Required To Accommodate Medical Marijuana**

Several states’ laws and court decisions explicitly hold that medical marijuana need not be accommodated in the workplace. In California, the state Supreme Court held that the California’s medical marijuana law only protects individuals from criminal prosecution, ruling in favor of an employer who refused to hire an injured veteran who used medical marijuana to treat chronic back pain after he failed a pre-employment drug test.<sup>2</sup> Courts in Oregon, Washington, and Colorado have issued similar decisions.

Furthermore, in Missouri, employees are expressly prohibited from filing claims against employers for wrongful termination, discrimination, or similar causes of action, based on an employer prohibiting the employee from being under the influence of medical marijuana while at

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<sup>2</sup> *Ross v. RagingWire Telecommunications*, 42 Cal.4th 920 (2008).

work or disciplining the employee for working or attempting to work while under the influence of medical marijuana. Even more, several states are silent on the issue of accommodation, but permit employers to fire employees for off-duty medical marijuana use, suggesting that accommodation is not required.

## **B. States Where Accommodation Of Medical Marijuana May Be Required**

Some states require employers to reasonably accommodate an employee who needs medical marijuana to treat a medical condition—for example, by allowing an employee to start work later in the morning because the employee uses medical marijuana at night to treat glaucoma. In Nevada, employers must try to reasonably accommodate medical marijuana users, so long as it does not pose a threat to safety, does not cause undue hardship for the employer, and does not prevent the employee from fulfilling job responsibilities. However, Nevada employers may still enforce a zero-tolerance policies for recreational marijuana users. Similarly, in New York, employers with four or more employees must also provide reasonable accommodations to medical marijuana users.

## **C. Several Recent Court Decisions Indicate Prohibition Of Medical Marijuana In The Workplace May Go Up in Smoke**

In several recent cases, courts have ruled in favor of medical marijuana users in lawsuits filed against employers. In May 2017, a Rhode Island Superior Court<sup>3</sup> held that Rhode Island's medical marijuana act created an implied private right of action and that an employer had violated the act when it refused to hire a medical marijuana user. In July 2017, the Supreme Judicial Court

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<sup>3</sup> *Callaghan v. Darlington Fabrics Corp.*, 2017 WL 2321181.

of Massachusetts<sup>4</sup> held that while the Massachusetts medical marijuana act did not create a private cause of action, failure to accommodate an employee's use of medical marijuana might run afoul of the state's Fair Employment Practices law. The court stated that employers must engage in the interactive process to determine whether there are any alternative treatments that would not violate the employer's zero-tolerance drug policies. The court further held that where no such alternatives exist, an exception to the employer's drug policy constituted a reasonable accommodation, for which the employer would have to demonstrate an undue hardship to justify its failure to provide such an accommodation.

Additionally, in August 2017, the U.S. District Court for the District of Connecticut<sup>5</sup> held that Connecticut's medical marijuana statute created an implied private right of action and was not preempted by any federal law, including the Controlled Substances Act. The federal court largely denied the defendant employer's motion to dismiss, explaining that "a plaintiff who uses marijuana for medicinal purposes in compliance with Connecticut law may maintain a cause of action against an employer who refuses to employ her for this reason."

Most recently, an Arizona plaintiff challenged the state's protections for employees who use medical marijuana. In *Terry v. United Parcel Services, Inc.*<sup>6</sup>, a former UPS sales director alleges that UPS terminated his employment in violation of the federal Americans with Disabilities Act and Arizona's medical marijuana act, after he tested positive for drugs, although he never used marijuana during work hours. This case is ongoing and is certainly one to monitor, as a decision for the plaintiff will strengthen the shift toward accommodating and accepting medical marijuana use in the workplace.

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<sup>4</sup> *Barbuto v. Advantage Sales and Marketing, LLC*, 477 Mass. 456 (2017).

<sup>5</sup> *Noffsinger v. SSC Niantic Operating Co., LLC*, 273 F. Supp. 3d 326 (D.Conn. 2017).

<sup>6</sup> *Terry v. United Parcel Services, Inc.* No. 2:17-cv-04972-PHX-DJB (D. Ariz., filed Dec. 29, 2017).



The issue of accommodating the use of marijuana becomes most complicated when the employee has an underlying medical condition which is being treated by the marijuana. The question of accommodation is quickly moving from whether employers *need* to accommodate to whether employers *should* accommodate medical marijuana use, given the way the judicial winds are blowing. For example, in New York, a certified medical marijuana patient is deemed as “having a ‘disability’ under the state’s human rights law.” Thus, employers must reasonably accommodate the underlying disability associated with the legal medical marijuana use. So, in 2017 a New York administrative law judge concluded that the New York City Taxi and Limousine Commission could not revoke a driver’s license after he tested positive for marijuana legally used in accordance with the state’s medical marijuana laws.<sup>7</sup>

Taken together, these recent court decisions across various states reflect an emerging trend that employers should be aware of: courts are increasingly leaning towards employee-friendly medical marijuana policies, which is concerning for employers. These cases demonstrate a shift from “absolutely no” to “well, maybe...depending” when it comes to how employers navigate medical marijuana accommodation issues. Particularly for multi-state companies, this trend means that employers need to pay attention to each state’s particular medical marijuana laws and be aware of what the requirements are with respect to potential discrimination claims filed by medical marijuana users.

## **V. Drug-Testing Applicants And Employees**

Drug testing employees can have many benefits such as improving safety and reducing workplace accidents; improving productivity; and reducing absenteeism, tardiness, sick leave, and PTO use. Many states also offer discounts on workers’ compensation insurance premiums

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<sup>7</sup> *Taxi & Limousine Comm’n v. W.R. OATH* Index No. 2503/17 (July 14, 2017).

if employers take certain steps to maintain a drug-free workplace. While most public employers are required to perform pre- and post-employment drug testing, the vast majority of private employers have the freedom to choose whether or not to drug test applicants or employees.

There is no comprehensive federal law that regulates drug testing in the private sector, leaving the issue open to state regulation. However, employers in certain industries, or that operate in certain states, may be required to drug test employees. Therefore, employers need to know which laws apply to them. For instance, employers in the transportation industry may be required to drug test employees and applicants under federal Department of Transportation regulations. Furthermore, some states limit drug testing to "reasonable suspicion" or "probable cause" situations, while other states explicitly authorize random drug testing in certain circumstances.

As a general rule, drug-testing is presumed to be lawful unless specifically restricted by state or federal law. However, as the body of law on employee privacy rights and related issues continues to evolve, drug-testing policies that are not explicitly authorized by law may be subject to legal challenges. The State Marijuana Laws Appendix at the end of this paper is a helpful resource when navigating state-by-state pre- and post-employment drug testing laws.

#### **A. Pre-Employment Drug Testing**

Generally, employers may require applicants to undergo pre-employment drug tests, so long as all applicants for a particular job position are drug tested equally, and no one applicant is singled out. In addition, although virtually all states allow applicant drug testing, many states impose procedural and other requirements. For example, the District of Columbia passed the

*Prohibition of pre-employment Marijuana Testing Act of 2015*, which prohibits employers from testing job applicants for marijuana use until after a conditional offer for employment has been made.

Additionally, depending on specific state laws, pre-offer drug testing could cause employers to unknowingly violate the Americans with Disabilities Act (ADA), which does not permit employers to gather medical information about applicants prior to the time an offer is made. Although the ADA, a federal statute, does not protect illegal drug use (marijuana remains illegal under federal law), employers who conduct pre-offer testing may unintentionally obtain more medical information about an applicant than the employer is entitled to have.

This was the case in *EEOC v. Grane Healthcare Co. and Ebensburg Care Center, LLC*,<sup>8</sup> where the employer's pre-offer urine test revealed four applicants' lawful use of prescription medications, and constituted a prohibited pre-offer "medical examination" under the ADA. With society's growing acceptance of marijuana, and the legal risk that now arises from drug testing or taking disciplinary action against marijuana users, many employers are now questioning whether their workplace marijuana policies and practices should be revised.

A notable issue under the umbrella of pre-employment drug testing is possible employee claims of discrimination from being denied a job offer due to an applicant's status as a medical marijuana user or for legal off-duty use in states where marijuana is legalized recreationally. For example, Arizona, Delaware, Minnesota, Oklahoma, and Rhode Island have statutes that specifically prohibit discrimination based on testing positive for marijuana on a drug test. Other states protect applicants with statutes that forbid discrimination based on an applicant's status as a registered medical marijuana cardholder, patient, or caregiver of a patient. Both case law and

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<sup>8</sup> *EEOC v. Grane Healthcare Co. and Ebensburg Care Center, LLC, d/b/a Cambria Care Center*, CV No. 3:10-250 (W. Dist. Pa. Mar. 6, 2014)

statutory law indicate that this budding trend will continue to grow and be implemented in other states.

Yet another notable issue facing employers when deciding whether to require pre-employment drug testing is the difficulty in finding eligible candidates. Now that more than one in five American adults can eat, drink, smoke or vape marijuana-based products as they please, drug testing employees could lead to some employers without a competitive workforce. Some employers who need to stay competitive are considering softening their drug testing policy, taking cannabis off the drug testing panel, or switching to a more sensitive test that only identifies heavy users. At the same time, however, softening the stance on marijuana make not be a viable option for government contractors or those employers with safety-sensitive positions. Therefore, employers need to look at their business needs, weigh the pros and cons, and assess the company's stance on marijuana in light of what's best for the business.

## **B. Drug Testing During Employment**

Employees have greater rights than applicants with regards to drug testing, because employees already hold a job that they stand to lose if the test comes back positive, while applicants stand to lose only an opportunity to obtain a job. Drug testing during employment can generally be split into three categories – random, reasonable suspicion, and post-accident.

As discussed above, every state has differing laws regarding post-employment drug testing. Courts and legislators recognize that drug testing implicates employees' privacy rights. These tests don't just reveal current drug use—that is, intoxication when the test is taken—but can also reveal drug use up to 30 days prior to testing. The science used to test for marijuana has been

slow to catch up with increased legalization.<sup>9</sup> While there are testing methodologies currently in development, there is no test for current marijuana inebriation. Thus, an employee may test positive for marijuana even if they used the drug days before their shift began and were not actually impaired on the job.

Because drug testing can be very intrusive, state and federal laws put some limits on when, how, and whether it can be done during employment. This creates potential legal issues for employers who wish to discipline employees who are believed to be impaired on the job. Even if an employee tests positive, it could be difficult to show that an employee was in fact under the influence while working.

The risks of drug testing current employees include disability discrimination claims, other general discrimination claims, and invasion of privacy claims. For instance, an employee who uses medical marijuana to treat a legitimate disability is protected from discrimination by various state disability discrimination laws. Similarly, if a company singles out certain groups of employees—for example, by race or disability—for drug testing, it could face a discrimination claim. If testing is allowed, employers may be allowed to single out certain job classifications for testing (for example, those that are safety-sensitive), but the employer should test all employees in those positions.

Finally, even if drug testing is allowed, an employee's privacy may be violated in the way the test is conducted. For example, requiring an applicant to take a urine test or disrobe in

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<sup>9</sup> In *Lower Churchill Transmission Construction Employers' Association Inc. and IBEW, Local 1620 (Tizzard)*, a 2018 arbitration decision out of Ontario, Canada, the arbitrator decided that accommodating a safety-sensitive employee's marijuana use constituted an undue hardship because it was impossible for the employer to measure the employee's residual impairment.

someone else's presence may well be a violation of privacy. Thus, employers face numerous legal landmines in conducting post-employment drug testing.

### ***1. Reasonable Suspicion Drug Testing***

Reasonable suspicion testing is the most common type of drug testing found in workplaces. It is generally accepted in all jurisdictions. Reasonable suspicion testing needs to be based on objective facts relating to a particular individual that would suggest to a reasonable person that the individual is under the influence in violation of a company policy. It requires individualized suspicion, not rounding up the “usual suspects.” Even in this very narrow area of the law, states vary on guidelines when testing on reasonable suspicion.

For example, in Arkansas, while employers may take adverse action against employee based on a good faith belief that the employee used, possessed, or was impaired by marijuana on company property or during work hours, a positive drug test alone is not sufficient grounds for a good faith belief. Similarly, in Illinois, employers may also take adverse action based on a good faith belief that an employee was impaired while working on company property during work hours, but the employee must be given a chance to challenge the basis for the determination. Thus, employers should review the guidelines for reasonable suspicion testing in all jurisdictions they operate in and supervisors should be trained on recognizing and documenting the signs and symptoms of drug use.

### ***2. Random Drug Testing***

Random testing, the second most common in the workplace, is unpredictable, and therefore highly effective. Indeed, just because a person is tested once, doesn't mean they are excluded the next time. However, it is best to use computer-generated random selection to avoid or fight off claims of discrimination. Although a highly effective tool, random testing is only

allowed in limited circumstances such as for safety sensitive positions or where the employer can show another “competing interest.” Moreover, random testing is outright prohibited in a number of states including Connecticut, Rhode Island, Vermont, and the cities of San Francisco and Boulder.

### **3. *Post-Accident Drug Testing***

Post-accident testing can offer employers more leeway in enforcing a zero-tolerance drug policy. For example, companies that are required by federal law or government contracts to maintain a drug-free workplace are obligated to follow federal law and cannot employ an individual who tests positive. Also, if the employee performs a job that concerns public safety or operates heavy machinery, employers can likely still test for marijuana or any other drugs. Post-accident testing should only focus on nontrivial, serious accidents and is particularly suited for safety-sensitive employees. Employers should have a selective approach where only workers who contributed to or caused the accident are tested.

In 2017, The Occupational Safety and Health Administration (OSHA) implemented new rules,<sup>10</sup> which among other things indicated that blanket automatic post-accident drug testing is improper because it has been shown to discourage employees from properly reporting injuries. Employers are encouraged to drug test when “employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use,” thereby taking on a more reasonable suspicion based standard. Most recently, however, the Trump administration has indicated that new OSHA standards may be unwound. Regardless, given the changing pro-marijuana climate, employers may want to carefully consider any blanket post-accident drug testing policies.

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<sup>10</sup> 29 CFR part 1904.

## **V. Employee Discipline And Potential Discrimination Claims**

One of the most burning questions employers have regarding medical and recreational marijuana is whether they can refuse to hire, fire, or otherwise discipline an employee for using marijuana. For a variety of reasons, there is no clear answer.

The issue is complicated by nuances in state laws, such as whether the employee tested positive for marijuana versus whether the employer simply knows that the employee is a registered medical marijuana patient, cardholder, or even caregiver. The issues are further complicated in states where recreational marijuana is completely legal. However, as a general matter, every state is different with regards to discrimination protections offered to medical and recreational marijuana users.

For instance, in California, Colorado, New Mexico, Oregon, and Washington, all trailblazing states in marijuana reform, employers may refuse to hire applicants and may terminate employees for testing positive for marijuana on a drug test, even if the user was off-duty.<sup>11</sup> On the other hand, in states such as Connecticut, Maine, Minnesota, Pennsylvania, Rhode Island, and West Virginia, employers may not discriminate against employees *based solely on their status as authorized medical marijuana users, patients, or caregivers of patients*. Still, there are many other states where the law is silent and employers must tread lightly due to the risk of being the “first employer” to test out a potential applicant or employee discrimination complaint.

The ongoing conflict between state and federal law requires careful balancing of the rights and obligations of employers in the wake of legalized marijuana. Employers must be aware of potential discrimination claims on the one hand and on the other hand, are subject to federal

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<sup>11</sup> *Coats v. Dish Network, LLC*, 350 P.3d 849 (2015); *Ross v. RagingWire Telecommunications, Inc.*, 42 Cal.4th 920 (2008); *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries*, 230 P.3d 518 (2010); *Roe v. TeleTech Customer Care Mgt. (Colorado) LLC*, 257 P.3d 586 (Wash. 2011).



laws requirements to provide a safe workplace and must be cognizant of potential negligent hiring and negligent retention claims when things unfortunately do go wrong in the workplace. Employers may also have contractual relationships involving federal benefits that would be jeopardized if a medical marijuana user is hired. To make things more complicated, while an employer retains the right to discipline an employee who cannot perform his or her job duties because of medical marijuana use, statutes protecting employees from discrimination on the basis of being a medical marijuana user, create a slippery slope. Although the path forward is fraught with uncertainty, the key principles outlined in this paper lay the foundation to help employers clear the haze.

## **VI. Conclusion**

In light of the numerous legal developments with regards to legalized marijuana in the workplace, many employers are now questioning whether their workplace marijuana policies and practices should be revised. Before deciding what policy is best for your company, it is important to understand both the business needs and the specific marijuana laws in the states where you have employees. Most employers' main concerns regarding marijuana in the workplace are efficiency and the prevention of any harm or safety issues. To that end, employers should keep in mind that no matter how it is looked at, marijuana is still a Schedule I controlled substance under federal law.

Legalized marijuana in the workplace is a relatively new area of the law, varies greatly from state to state, and will continue to rapidly evolve. Until the conflict between state and federal law is resolved, employers should: 1) stay up to date on quickly evolving marijuana laws; 2) develop state-compliant workplace drug policies or practices that are appropriate for their

company, potential applicants, and employees; 3) apply those policies uniformly; and 4) contact outside counsel if any specific concerns or incidents arise.

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
Alabama	No	Yes	Medical Marijuana remains illegal  Ala. Code§25-5-330et seq.	-	Testing authorized after applicant is given notice of drug-testing policy and a conditional offer of employment.  Testing authorized, including random testing and testing on reasonable suspicion, as part of fitness-for-duty exam, after on-the-job injury, or as follow-up to a rehabilitation program. Employees must receive 60 days' advance notice of testing policy, which must be conspicuously posted.
Alaska – Medicinally and Recreationally legal	No	Yes	Ak Stat. §§ 17.37.030(b), 17.38.120 (a)  DT Alaska Stat. §23.10.600 <i>et seq.</i> , §14.09.025	Employers are not required to accommodate medical or recreational marijuana use in the workplace.	Applicant testing not restricted. Positive results or refusal may be grounds for not hiring.  Testing authorized, including random testing, for job-related purpose, consistent with business necessity. Thirty days' notice and a written policy statement must be given to employees. Discipline or discharge for positive test or refusal to submit to test. School bus drivers subject to random testing and discipline under separate provisions.
Arizona – Medicinally Legal	No	No <sup>12</sup>	Ariz. Rev. Stat. § 36-2813	Employers may not discriminate against medical marijuana users <b>based</b>	Testing authorized if applicant is informed in writing beforehand. Applicant's refusal to submit to test may be used as basis for not

<sup>12</sup> *Terry v. United Parcel Services, Inc.* No. 2:17-cv-04972-PHX-DJB (D. Ariz., filed Dec. 29,2017), a former UPS sales director alleges that UPS terminated his employment in violation of the ADA and the Arizona Medical Marijuana Act (AMMA), after he tested positive for drugs, although he never used marijuana during work hours. This case is ongoing.

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
			Ariz. Rev, Stat. §23-493 et seq., §15-513, §28-414.01	<b>solely on their status as registered cardholders or for testing positive on a drug test for marijuana</b> , unless it would cause the employer to lose money or licensing benefits under federal law. Employers may fire or take other adverse action against employees who use, possess, or are impaired by medical marijuana on company property or during work hours.	hiring. Testing required to certify school bus drivers.  Testing authorized, including random testing, for any job-related purpose consistent with business necessity. Written drug-testing policy must be distributed to all employees. Discipline or discharge authorized for employees who test positive or refuse to submit to test. School district transportation employees must submit to testing in the event of accident or if based on probable cause.
<b>Arkansas – Medicinally Legal</b>	No	No	Ark. Const. amend. XCVIII, §§ 3, 6	Employers with 9 or more employees may not discriminate against <b><i>applicants or employees based on past or present status as a medical marijuana cardholder or as a designated caregiver for a physically disabled medical marijuana patient.</i></b> Employers may take adverse action against employee based on a good faith belief that the employee used,	

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
				possessed, or was impaired by medical marijuana on company property or during work hours. A positive drug test alone is not sufficient grounds for a good faith belief. <b><i>Employers may, however, exclude employees from safety-sensitive positions based on a positive drug test.</i></b>	
<b>Colorado- Medicinally and Recreationally Legal</b>	No	Yes	<p>Colo. Const. art. XVIII, §§ 14, 16</p> <p>Coats v. Dish Network, LLC, 350 P.3d 849 (2015)</p>	Employers are not required to accommodate medical or recreational marijuana use in the workplace. Employer may fire employees who test positive for marijuana, even for off-duty use with a valid medical marijuana card.	
<b>California – Medicinally &amp; Recreationally Legal</b>	No <sup>13</sup>	Yes	Cal. Health & Safety Code §§ 11362.5, 11362.7 to 11362.9; Cal. Health &	Employers are not required to accommodate medical or recreational marijuana use in the workplace. Employers may fire employees who test positive for marijuana,	<p>Testing authorized of applicants to state agency positions of "sensitivity" if testing is job related.</p> <p>Testing authorized of state employees in positions of "sensitivity." Employees who test positive may be referred for treatment or may</p>

<sup>13</sup> There was a bill before the CA legislature during the 2018 term that would have required accommodation and made medical marijuana users a protected class. The bill failed, but there are several similar bills in the works and we will likely see it again next term.

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
			<p>Safety Code §§ 11362.1 to 11362.45</p> <p><i>Ross v. RagingWire Telecommunications, Inc.</i>, 42 Cal.4th 920 (2008)</p> <p>Exec. Order D-58-86, Labor Code § 1025 et seq.</p>	even if the use was off duty and for a medical condition with a valid medical marijuana card.	be suspended or removed from job. Private sector and public employers of 25 or more must "reasonably accommodate" employees who want to enter drug treatment programs.
<b>Connecticut – Medicinally Legal</b>	No	No <sup>14</sup>	<p>Conn. Gen. Stat. Ann. §§ 21a-408 to 21a-408v</p> <p><i>Noffsinger v. SSC Niantic Operating</i></p>	Employers may not discriminate against <b>applicants or employees based on their status as a qualifying patient or primary caregiver of a qualifying patient</b> under medical marijuana laws.	<p>Testing authorized if applicant is informed in writing beforehand. Former employees may not be tested unless they have been away from the job for at least 12 months. Testing required to certify school bus drivers.</p> <p>Testing authorized on reasonable suspicion of substance abuse; random testing authorized of</p>

<sup>14</sup> *Noffsinger v. SSC Niantic Operating Co., LLC*, F. Supp. 3d 2017 WL 3401260 (D. Conn. Aug. 8, 2017). Employee's job offer was rescinded after she tested positive for medical marijuana. The court held that the fact that the ADA allows employers to prohibit the illegal use of drugs at the workplace did not give employers the power to regulate non-workplace activity. This is the first federal court to rule that federal law doesn't preempt a state law that expressly prohibits employers from firing or refusing to hire someone who uses marijuana for medical purposes.

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
			<p><i>Co., LLC</i>, F. Supp. 3d 2017 WL 3401260</p> <p>Conn. Gen.Stat. §31-51tet seq., §14-261a et seq., §14-276a</p>	Employers may prohibit employees from using marijuana during work hours and discipline employees for being under the influence of marijuana during work hours.	employees in safety-sensitive jobs. Testing required for intrastate truck drivers after a reportable accident, upon reasonable cause, or at random under federal law. Discipline or discharge authorized for employees who test positive.
<b>Delaware – Medicinally Legal</b>	No.	No	<p>Del. Code Ann. tit. 16, §§ 4901A to 4928a</p> <p>Del. CodeAnn. Tit. 21§2708</p>	Employers <b>may not discriminate against medical marijuana users based on their status as registered cardholders or for testing positive for marijuana on a drug test</b> , unless it would cause the employer to lose money or other licensing-related benefits under federal law. Employers may take adverse action against employees who use, possess, or are impaired by marijuana on company property or during work hours.	<p>Testing required to certify school bus drivers. Testing also required for security-sensitive positions with Department of Corrections.</p> <p>Employee testing is not subject to restriction.</p>

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
<b>District of Columbia – Medicinally and Recreationally Legal</b> <sup>15</sup>	No	Yes	D.C. Code Ann. §§ 7-1671.01 to 7-1671.13; 48-904.01	Medical marijuana statute does not address employment. Recreational marijuana law does not require employers to allow or accommodate the use or possession of marijuana in the workplace. Employers may enforce policies restricting use of recreational marijuana by employees.	
<b>Florida – Medicinally Legal</b>	No	Yes	Fla. Stat. Ann. § 381.986  Fla. Stat. § 440.101 et seq., § 627.0915, § 112.0455	Employers are not required to accommodate the use of medical marijuana in the workplace or allow an employee to work under the influence of marijuana.	Testing authorized with advance notice to applicant; applicant's refusal to submit to test may be used as basis for not hiring.  Testing authorized on reasonable suspicion of substance abuse, as part of routine fitness-for-duty exam, or as follow-up to employee's participation in counseling or rehabilitation. Written notice of testing program must be given 60 days in advance. Testing confers eligibility for certain discounts and other benefits under state's workers' compensation law. Discipline or discharge authorized for employees who test positive.

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<sup>15</sup> Federal law is enforced on federal lands and both medical marijuana and recreational remain illegal under federal law.



State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
<b>Georgia – CBD Only</b>	No	Yes	<p>Georgia Code section 16-12-191 (Low THC Oil only)</p> <p>Medical marijuana remains illegal</p> <p>Ga. CodeAnn. §45-23-1 et seq. §45-20-110 et seq., 34-9-410 et seq.</p>	Employers are not required to allow or accommodate the use or possession of marijuana in the workplace. Employers may enforce a zero-tolerance drug policy and terminate employees for testing positive for marijuana, even for off-duty use.	<p>Testing authorized of applicants for state government employment, public school employment, and private employment. Applicant who refuses to be tested or who tests positive may be barred from state and public school employment for 2 years.</p> <p>Testing authorized, including random testing, on reasonable suspicion, as part of routine fitness-for-duty exam, after an on-the-job injury, and as part of follow-up to rehabilitation. Policy must be distributed to employees and posted. Testing confers eligibility for certain discounts and other benefits under the state's workers' compensation law. Random testing of "high risk" state government and public school employees including school bus drivers is authorized under separate provisions.</p>
<b>Hawaii – Medicinally Legal</b>	No	Yes <sup>16</sup>	<p>Haw. Rev. Stat. Ann. §§ 329-122 (c)(2)(B)</p> <p>Hawaii Rev.Stat.</p>	Medical marijuana law does not authorize use in the workplace. Employers can enforce zero-tolerance policy.	Testing authorized if applicant receives advance notice in writing of substances to be tested for and has opportunity to disclose current prescription and nonprescription medications. Testing required of civil service applicants for positions with city of Honolulu.

<sup>16</sup> HB 2729, passed in July 2018 establishes a *Working Group*, which will examine employment issues involving employees who use medical marijuana, to include discrimination in hiring/firing/testing. The working group will submit a report to the legislature before the convening of the 2019 regular session of the Hawaii legislature.

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
			§329B-1 et seq.		Testing authorized if employee receives advance notice in writing of substances to be tested for and has opportunity to disclose current prescription and nonprescription medications.
<b>Idaho – Not Legal</b>	No	Yes	Medical Marijuana remains illegal  Idaho Code§72-1701 etseq.	-	Testing authorized as a condition of employment.  Testing authorized, including random testing, after notice to employees. Policy must list types of tests and state that violation is grounds for misconduct discharge. Unemployment benefits may be denied for discharge because of positive result, refusal to be tested, or altering results.
<b>Illinois – Medicinally Legal</b>	No	No	410 Ill. Comp. Stat. Ann. §§ 130/30 to 130/50	<b>Employers may not discriminate based solely on status as a registered medical marijuana patient or designated caregiver of a medical marijuana patient,</b> unless it would cause the employer to violate federal law or lose money or licensing-related benefits under federal law. Employers may take adverse action based on a good faith belief that the employee used or possessed marijuana on company	

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
				property or during work hours. Employers may also take adverse action based on a good faith belief that the employee was impaired while working on company property during work hours, but the employee must be given a chance to challenge the basis for the determination.	
<b>Indiana– Not Legal</b>	No	Yes	Medical Marijuana remains illegal	-	
<b>Iowa – CBD Only</b>	No	Yes	<p>Iowa Code Chapter 124E; Iowa Admin. Code 641-154</p> <p>Iowa Code Ann. §730.5</p> <p>Medical marijuana remains illegal.</p>	Only cannabidiol (CBD) and 3% or less THC oil is legal for medicinal purposes. Law is silent on employee protections.	<p>Testing authorized as part of pre-employment physical examination if applicant is informed orally at time of application that drug test is required, and if ads and application forms carry notice of drug test.</p> <p>Testing authorized when there is probable cause to suspect substance abuse and employee holds job in which impairment would pose a danger, or during annual employee physical, if employee is given 30 days' notice. Random testing permitted so long as specific procedure in the law is followed using a computer-based random number generator that matches employee's</p>

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
					social security number or payroll identification number (selection from entire employee pool, full time employee pool or safety sensitive employee pool). Substance abuse evaluation and opportunity for treatment required for first positive test result. Discipline or discharge authorized for subsequent positive result or failure to complete treatment.
<b>Kansas – CBD only</b>	No	Yes	<p>KS Stat § 65-4105, 65-4107, 65-4109</p> <p>Medical Marijuana remains illegal.</p> <p>Kan. Gen. Stat. Ann. § 75-4362</p>	<p>CBD oil containing <u>NO</u> THC is legal for medicinal purposes. Legislature purposely removed CBD from the state's definition of marijuana.</p>	<p>Testing authorized of applicants for safety-sensitive jobs in state government after a job offer has been made. Advertisements for safety-sensitive jobs must include notice of drug testing requirement.</p> <p>Testing authorized of state employees holding safety-sensitive jobs and individuals taking office as governor, lieutenant governor, or attorney general, but only if there is reasonable suspicion of substance abuse, as evidenced by a workplace accident or medical emergency that could be attributed to drug use, by direct observation of impaired performance, by information that the employee is using drugs, or by physical signs of on-the-job drug use. Employee testing positive for the first time must have opportunity to undergo drug evaluation and recommended treatment.</p>
<b>Kentucky – CBD Only</b>	No	Yes	KRS 218A.010	Medical marijuana remains illegal. However, under the	

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
			Medical Marijuana remains illegal.	state's Controlled Substances statute, CBD was intentionally excluded from the definition of marijuana by the legislature.	
<b>Louisiana – Medicinally Legal</b>	No	Yes	LA Rev. Stat. tit. 40, §1046  La. Rev.Stat.§49: 1001 etseq.,§23:16 01(1),§46:46 0.4	Medical marijuana law does not address employment.	Applicant testing not restricted.  Employee testing authorized, but employer may not discharge an employee on the basis of first-time positive test findings. Employees who are discharged for drug use, on or off the job, may be disqualified from receiving unemployment compensation. Employees of state contractors subject to random testing.
<b>Maine – Medicinally and Recreationally Legal</b>	No	No	Me. Rev. Stat. tit. 22, §§ 2421 to 2430-B; Me. Rev. Stat. tit. 7, §§ 2441 to 2455  Maine Rev. Stat.§26:681 et seq.	<u>Medical marijuana:</u> Employers <b>may not</b> discriminate <b>based on status as a medical marijuana patient or primary caregiver of a medical marijuana patient</b> , unless it would cause the employer to violate federal law or lose a federal contract or funding. Employers are not required to allow employees to smoke marijuana on company premises or allow	Applicant testing authorized if applicant has been offered employment or a position on a roster of eligibility. Employer may refuse to hire employee who refuses to test or who tests positive.  Employee testing authorized if there is probable cause for suspicion of substance abuse that is not based solely on the occurrence of an accident. Random testing authorized of employee returning to work after positive test, of employees in safety-sensitive jobs, and pursuant to a collective bargaining agreement. Employee who tests positive may be referred for counseling or treatment. Discipline or discharge

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
				<p>employees to work under the influence of marijuana.</p> <p><u>Recreational marijuana:</u> Employers <b>may not discriminate against applicants or employees based on purely off-duty marijuana use.</b> However, employers are not required to accommodate use or possession of marijuana at the workplace and may discipline employees who are under the influence of marijuana at work.</p>	authorized for refusal to submit to test, for subsequent positive result, or for failure to complete treatment.
<b>Maryland – Medicinally Legal</b>	No	Yes	<p>MD Health-Gen Code §13–3301. (2015)</p> <p>Md. Code Ann. Health Gen. §17-214</p>	Medical marijuana law does not address employment.	<p>Applicant testing not subject to restriction.</p> <p>Employee testing authorized if supported by legitimate business reason.</p>
<b>Massachusetts- Medicinally and Recreationally Legal</b>	Yes, if employee is a registered medical marijuana user,	No	Mass. Gen. Laws Ann. Ch. 94I;	<p><u>Medical marijuana:</u> Employers are not required to accommodate on-site use of medical marijuana at the workplace. However, <b>an</b></p>	

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
	but contrary to federal law.		<p>Mass. Gen. Laws Ann. ch. 94G, § 2</p> <p><i>Barbuto v. Advantage Sales and Marketing, LLC</i>, 477 Mass. 456 (2017);</p>	<p><b>employee who uses medical marijuana to treat a disability is entitled to reasonable accommodation under the state disability discrimination law.</b> Under that law, employers with 6 or more employees must accommodate off-site, off-duty use, unless there is an equally effective alternative treatment available or it would cause the employer undue hardship.</p> <p><u>Recreational marijuana:</u> Employers are not required to accommodate recreational marijuana use in the workplace. Employers may enforce workplace policies restricting marijuana consumption by employees.</p>	
Michigan – Medicinally and Recreationally legal.	No	Yes	Mich. Comp. Law §§ 333.26421 to 333.26430, 333.26424,	<p><u>Medical marijuana</u></p> <p>Employers are not required to accommodate marijuana use at the workplace or allow an employee to work</p>	

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
			333.26427; 333.27954  <i>Casias v. Wal-Mart Stores, Inc.</i> , 695 F.3d 428 (2012)	<p>under the influence of marijuana. Employers may fire employee for testing positive for marijuana on a drug test, even when the use was off duty and the employee had a valid medical marijuana card.</p> <p><u>Recreational marijuana:</u>  Employers are not required to accommodate recreational marijuana use. Employers may discipline, refuse to hire, or fire employees for violation of a workplace drug policy or for working while under the influence.</p>	
<b>Minnesota – Medicinally Legal</b>	No	No	Minn. Stat. Ann. §§ 152.21 to 152.37  Minn. Stat. §181.950 et seq.	Employers may not discriminate against applicants or employees <b>based on status as a registered medical marijuana patient or for testing positive for marijuana on a drug test</b> , unless it would cause the	<p>Applicant testing authorized, pursuant to employer's written policy and with advance notification of applicant, only after offer of employment has been made and only if all candidates for job are tested.</p> <p>Employee testing authorized after an accident, as part of an employee assistance program, when there is reasonable suspicion of substance</p>



State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
				<p>employer to violate federal law or lose money or licensing-related benefits under federal law.</p> <p>Employers may take adverse action against an employee who uses, possesses, or is impaired by marijuana on company property or during work hours.</p>	<p>abuse, or part of annual physical exam, provided employee has two weeks' advance notice.</p> <p>Random testing authorized of employees in safety-sensitive jobs. Employer may suspend or transfer employee testing positive pending outcome of confirming test. Discharge authorized only if employee refuses or fails to complete treatment.</p>
<b>Mississippi – CBD Only</b>	No	Yes	<p>MS Code § 41-29-136</p> <p>Medical marijuana remains illegal</p> <p>Miss. Stat. § 71-7-1 et seq.</p>	<p>Only CBD oil containing no more than .5% THC is legal for medicinal purposes. Law is silent on employee protections.</p>	<p>Applicant testing not subject to restriction.</p> <p>Employee testing authorized on reasonable suspicion of substance abuse, in connection with rehabilitation or treatment, as part of routine physical exam, or if collective bargaining agreement authorizes random testing. Discharge authorized if employee tests positive or refuses test.</p>
<b>Missouri – Medicinally Legal</b>	No	Yes	<p>Missouri Constitution, Article XVI, Section 1</p>	<p>Employers are not required to accommodate the use of medical marijuana in the work place or allow employees to work while under the influence.</p> <p><b>Employees are expressly prohibited from filing</b></p>	

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
				claims against Missouri employers for wrongful termination, discrimination, or similar causes of action based on the employer prohibiting the employee from being under the influence of marijuana while at work or disciplining the employee for working or attempting to work while under the influence of marijuana.	
<b>Montana – Medicinally Legal</b>	No	Yes	Mont. Code Ann. §§ 50-46-320 (4)(b)  Mont. Code Ann. §39-2-205 et seq.	Employers are not required to accommodate the use of medical marijuana by a registered cardholder. As part of an employment contract, employers may include a provision prohibiting an employee's use of medical marijuana.	Testing authorized of applicants for intrastate motor carrier jobs, for jobs in hazardous environments, or jobs that primarily involve security, public safety, or fiduciary responsibility.  Employee testing authorized, including random testing, on reasonable belief of job impairment, after work-related accident causing injury or damage of \$1,500 or more, or as part of regular physical exam for employees of intrastate motor carriers. Disciplinary action authorized if employee presents no reasonable explanation for positive findings.
<b>Nebraska – Medicinally Legal</b>	No	Yes	Medical marijuana	-	Applicant testing not subject to restriction.

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
			remains illegal  Neb. Rev.Stat. §48-1901 et seq.		Employee testing authorized without restriction. Discipline or discharge authorized after a confirming positive test or refusal to submit to test.
<b>Nevada – Medicinally and Recreationally Legal</b>	Yes, if employee is a registered medical marijuana user, but contrary to federal law.	Yes, recreational users only.	Nev. Rev. Stat. Ann. §§ 453A.800, 453D.100  Nev. Rev.Stat. §284-4061 et seq.	<u>Medical marijuana:</u> Employers <b>must try to make reasonable accommodations for registered medical marijuana patients</b> , as long as it would not pose a safety threat to people or property, cause an undue hardship, or prevent the employee from fulfilling his or her job responsibilities.  <u>Recreational marijuana:</u> Employers may enforce a workplace policy prohibiting or restricting use of recreational marijuana by employees.	Applicant testing authorized for jobs involving public safety.  Employee testing authorized for jobs involving public safety. Referral for counseling or treatment authorized for employee testing positive. Discipline or discharge authorized for subsequent positive findings, for workplace use, or for working under the influence.
<b>New Hampshire – Medicinally Legal</b>	No	Yes	N.H. Rev. Stat. Ann. §§ 126-X:3	Employers may discipline employees for using marijuana in the workplace	

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
				or for working while under the influence of marijuana.	
<b>New Jersey – Medicinally Legal</b>	No	Yes	<p>N.J. Stat. Ann. §§ 24:6I-1 to 24:6I-16</p> <p><i>Cotto v. Ardagh Glass Packing</i>, CV-18-1037 (D.N.J. August 10, 2018)</p>	<p>Employers are not required to accommodate use of medical marijuana.</p> <p>Employers may enforce a zero-tolerance drug policy and terminate employees for testing positive for marijuana, even for off-duty use.</p>	
<b>New Mexico – Medicinally Legal</b>	No	Yes	<p>N.M. Stat. Ann. §§ 26-2B-5</p> <p><i>Garcia v. Tractor Supply Company</i>, 154 F.Supp.3d 1225 (2016)</p>	Employers may fire or discipline medical marijuana users based on a positive drug test.	
<b>New York – Medicinally Legal</b>	Yes, if employee is a medical marijuana patient, but	No	New York Health Law, Title V-A, § 3369(2)	Employers may not discriminate against applicants or employees <b>based on status as a</b>	

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
	contrary to federal law.			<p><b>medical marijuana patient</b>, but they may enforce a policy that prohibits employees from working while impaired by marijuana. <b>Employers with four or more employees must also provide reasonable accommodations to medical marijuana users.</b></p> <p>Employers are not required to take any action that would cause them to violate federal law or lose a federal contract or funding.</p>	
<b>North Carolina – CBD Only</b>	No	Yes	<p>NC Gen Stat §§ 90-113.100 to 90-113-106.</p> <p>Medical marijuana remains illegal.</p> <p>N.C. Gen. Stat. §95-230 et seq.</p>	<p>“Hemp extract” for the treatment of epilepsy is permitted if recommended by a neurologist. Patients and caregivers may only possess hemp extracts with greater than 5% CBD and less than 0.9% THC.</p>	<p>Applicant testing not subject to restriction.</p> <p>Employee testing not subject to restriction.</p>

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
North Dakota – Medicinally Legal	No	Yes	NDCC 19-24.1-34	Employers may discipline employees for possessing or using marijuana in the workplace or for working while under the influence of marijuana.	
Ohio – Medicinally Legal	No	Yes	Ohio Rev. Code Ann. §§ 3796.01 to 3796.30  Ohio Admin.Code§ 4123-17-58	Employers are not required to accommodate an employee's use or possession of medical marijuana. Employers may enforce zero-tolerance drug policies and discipline, fire, or refuse to hire medical marijuana users.	Applicant testing authorized with advance notice to applicant and after offer of employment has been made.  Employee testing authorized on reasonable suspicion of substance abuse, for new hires, after an accident, and as follow-up to a treatment program.
Oklahoma – Medicinally Legal	No	No	Oklahoma Statutes Title 63, Section 425  OK Stat. Tit.40 §551-565	Employers cannot discriminate in hiring, impose any term or condition of employment, or otherwise penalize an employee <b>based on his or her status as a medical marijuana license holder or solely based on a positive test for marijuana</b> or its components. Employers retain the right to take disciplinary action as to an employee's possession	Applicant testing authorized with advance notice to applicant and after offer of employment has been made. Notice to be in writing, describing methods, procedures, and policies in detail.  Employees testing authorized on 30 days' advance notice to employees of policy describing the potential discipline for positive test result.

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
				or use of marijuana on or in company property, while at work, or during work hours. If an employer would “imminently” lose a monetary or licensing-related benefit under federal law or regulations, then the employer does not have to comply with the OMMA.	
<b>Oregon – Medicinally and Recreationally Legal</b>	No	Yes	<p>Or. Rev. Stat. Ann. §§ 475B et seq.</p> <p><i>Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries</i>, 230 P.3d 518 (2010)</p> <p>OR Rev. Stat. § 438.435 et seq.; 659.227</p>	Employers may fire or discipline employees for testing positive for marijuana, even if the use was off duty and with a valid medical marijuana card.	<p>Testing authorized if there is reasonable suspicion applicant is under the influence of alcohol or controlled substance.</p> <p>Testing authorized if there is reasonable suspicion employee is under the influence of alcohol or controlled substance.</p>

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
Pennsylvania – Medicinally Legal	Yes, impairment is allowed at work so long as employee conduct does not fall below normal standard of care for their position, but contrary to federal law. Employers not required to accommodate use on company property.	No, unless conduct falls below normal standard of care.	35 Pa. Stat. Ann. § 10231.2103	Employers may not discriminate <b>based on status as a medical marijuana patient</b> . Employers may discipline employees for being under the influence of marijuana at the workplace, or for working while under the influence of medical marijuana, <b>but only when the employee's conduct falls below the normally accepted standard of care for that job</b> . Employers are not required to accommodate medical marijuana consumption on company property and may prohibit employees from performing any duty that would pose a health or safety risk while impaired. Employers are not required to take any action that would violate federal law.	



State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
<b>Rhode Island – Medicinally Legal</b>	No	No <sup>17</sup>	R.I. Gen. Laws §§ 21-28.6-4, 21-28.6-7;  <i>Callaghan v. Darlington Fabrics Corp.</i> , 2017 WL 2321181  R.I. Gen.Laws §28-6.5-1 et seq.	Employers are not required to accommodate the medical use of marijuana in the workplace. However, employers may not refuse to hire or otherwise penalize a person <b>based solely upon the person's status as a medical marijuana patient or for testing positive for marijuana</b> on a drug test.	Applicant testing authorized in the private sector after offer of employment has been made. In public sector, testing authorized for jobs involving public safety or when required by federal law.  Employee testing authorized on reasonable suspicion of substance abuse and in conjunction with rehabilitation program. Random testing prohibited.
<b>South Carolina – CBD only</b>	No	Yes	SC Code §44-53-1810  S.C. Code§38-73-500,§41-1-15	Only CBD oil containing no more than .9% THC is legal for epilepsy patients. Law is silent on employee protections.	Applicant testing is not subject to restriction.  Testing authorized, including random testing, with follow-up tests within 30 minutes of initial test.
<b>South Dakota – Not Legal</b>	No	Yes	Medical Marijuana remains illegal	-	Testing authorized of applicants for safety-sensitive state jobs after offer of employment, but public announcements and advertisements must carry notice of drug-testing requirements.

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<sup>17</sup> *Callaghan v. Darlington Fabrics Corp.*, 2017 WL 2321181 (R.I Super. May 23, 2017): The court held that refusing to hire someone because she could not pass a drug test, due to medical marijuana use outside the workplace, violated state law.

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
			S. Dak. Cod.Laws Ann.§23-3-64		Testing authorized of state employees holding safety-sensitive jobs if there is reasonable suspicion of substance abuse.
<b>Tennessee – CBD only</b>	No	Yes	Medical Marijuana remains illegal  Tenn. Code Ann. §41-1-122	-	Applicant testing not subject to restriction.  Testing of Corrections Department employees authorized if there is reasonable suspicion of substance abuse. Employees who test positive subject to appropriate disciplinary action, but counseling and rehabilitation must be offered.
<b>Texas– CBD Only</b>	No	Yes	Medical Marijuana remains illegal	-	
<b>Utah – Medicinally Legal</b>	No	Yes	The Utah Medical Cannabis Act (2018) <sup>18</sup>	Law is silent on employee protections.	No restriction on applicant testing in the private sector. Local governments and state colleges may test applicants pursuant to a written policy and with advance notice to applicant. Positive results or refusal to test grounds for not hiring.  Employee testing authorized pursuant to employer's written policy, distributed to all employees, in cases of possible employee impairment, workplace accidents or theft, safety maintenance, or productivity/quality/security maintenance. Employees who test positive or

<sup>18</sup> The Act has not yet been codified. It was voted into law during the November 2018 general election.

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
					refuse to be tested are subject to referral for rehabilitation or disciplinary action, including discharge.
<b>Vermont – Medicinally and Recreationally Legal</b>	No	Yes	<p>Vt. Stat. Ann. tit. 18, §§ 4230a, 4471 to 4474m</p> <p>Vt. Stat. Ann. Tit. 21 §511et seq.</p>	<p>Medical marijuana: The law does not address employment.</p> <p>Recreational marijuana: Employers are not required to accommodate, and may regulate or prohibit, use or possession of marijuana in the workplace.</p>	<p>Applicant testing authorized with advance written notice to applicant, after conditional offer of employment has been made, and if test is part of pre-employment physical.</p> <p>Employee testing authorized as part of an employee assistance program or when there is probable cause for suspicion of substance abuse. Random testing prohibited. Employer may suspend employee who tests positive for period of rehabilitation, but may not discharge an employee who agrees to rehabilitation after first positive test.</p>
<b>Virginia– Not Legal</b>	No	Yes	Medical Marijuana remains illegal	-	
<b>Washington – Medical and Recreationally Legal</b>	No	Yes	<p>Wash. Rev. Code Ann. § 69.51A.060(7);</p> <p><i>Roe v. TeleTech Customer Care Mgt.</i></p>	Employers may establish a drug-free workplace policy, in which case no accommodation for medical marijuana use is required. Employers may refuse to hire applicants or fire employees for testing positive for marijuana on a	<p>Applicant testing authorized with advance written notice to applicant and after conditional offer of employment has been made.</p> <p>Testing authorized for private employers on 60 days' notice to employees, in cases of workplace accidents, as part of an employee assistance program, on reasonable suspicion of substance abuse, or at random. Employers' written</p>

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
			<p>(Colorado) LLC, 257 P.3d 586 (Wash. 2011)</p> <p>Wash. Rev.Code§49 .127.1 et seq., Wash. Admin. Code§356-46-125, §356-05-128</p>	drug test, even if the use was off duty.	substance abuse policy must be posted and distributed to employees. State agencies can test on reasonable suspicion—stated in writing—for safety-sensitive positions pursuant to a written testing policy.
West Virginia – Medicinally Legal	No	No	W. Va. Code Ann. §§ 16A-5-10, 16A-15-4	<p>Employers may not discriminate against employees <b><i>based solely on their status as certified to use medical marijuana.</i></b></p> <p>Employer may not terminate or refuse to hire solely based on certified medical marijuana user status. Employers may discipline an employee for falling below normally accepted standard of care while under the influence of medical marijuana.</p> <p>Employers may also prohibit</p>	

State	Disability Accommodation	Hiring and Firing Medical Marijuana Users	Applicable Law	Employee Protections	Drug Testing
				employees from performing any duty that would be life-threatening, or that would pose a public health or safety risk, while under the influence of marijuana. Employers are not required to take any action that would violate federal law.	
<b>Wisconsin– CBD Only</b>	No	Yes	WI. Stat. 94.55 (2)(a); WI Stat. § 961. 32  Medical Marijuana remains illegal	Only CBD oil containing no more than .3% THC is legal for medicinal purposes. Law is silent on employee protections.	
<b>Wyoming – CBD Only</b>	No	Yes	WY Stat § 35-7-1901 - 1902 (2016)	Only CBD oil containing no more than .3% THC is legal for epilepsy patients with valid hemp extract ID card. Law is silent on employee protections.	