

# UNION ORGANIZING IN THE CANNABIS INDUSTRY: WHAT EVERY CANNABIS EMPLOYER SHOULD KNOW ABOUT LABOR PEACE AGREEMENTS

Insights  
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As more states legalize medicinal and recreational cannabis, many states are requiring that cannabis employers enter into a “labor peace agreement” with a union in order to obtain or maintain a license to grow, manufacture, or dispense cannabis products. Several unions have seen this as an opportunity to add union members in a time when membership is in steep decline. But are they good for cannabis employers?

Cannabis employers must understand exactly what the laws are where the employer is operating and not just accept whatever LPA a union puts in front of them. Below, we explore this growing trend and the best practices for employers seeking to do business in these jurisdictions.

## WHAT IS AN LPA?

A labor peace agreement (LPA) is an agreement entered into between an employer and a union pursuant to which the employer agrees not to oppose unionization and the union (who is attempting to organize the workforce) agrees to not strike or otherwise stop work. The LPA does not guarantee unionization, but it very much increases the chances in these circumstances where the employer does not oppose or educate employees with its own message about unionization.

What, precisely, is required to with the LPA will depend upon the specific language of the governing state’s law. For instance, California and Illinois define an LPA as an

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agreement between a union and an employer prohibiting any disruptions or work stoppages and requiring that the employer provide the union access to work areas and will not disrupt communications by the union to employees. In contrast, New York’s law defines LPAs as agreements that prohibit work stoppages but do not mention any union access or communications.

In a step further, legislation has been introduced in Washington State that would define an LPA as an agreement requiring the employer remain “neutral” to union campaign activity but would not prohibit striking by the union. Unlike the other states requiring LPAs, Illinois does not mandate that an employer enter into an LPA, but instead provides a license as an incentive for compliance.

## **ARE THESE LPA REQUIREMENTS LEGAL?**

Labor relations – that is, the interaction between unions and employers – is governed by the federal law called the National Labor Relations Act (NLRA). Courts have routinely determined that the NLRA preempts or takes precedence over state laws that frustrate the purposes by imposing requirements or restrictions where the NLRA does not.

Importantly, for LPA purposes, the NLRA provides employees with the right to not engage in any union activity and employers may ban unions from accessing the workplace. The NLRA also grants employers the ability to speak freely to workers about the pros and cons of unionization efforts as the employer does not threaten employees for engaging in union activity, interrogate any employee about union activity, or make promises in exchange for an employee’s vote against unionization or otherwise not supporting the union.

Given that the state requirements described above impose obligations where the NLRA does not, there is a strong argument that these laws are entirely or largely preempted by the NLRA. However, until some cannabis employer successfully challenges the law on this basis, a lot of eager employers are going to sign LPAs with labor unions and not risk their time and resources on litigation over the issue.

## **WHAT ARE THE MOST IMPORTANT LPA CONSIDERATIONS FOR EMPLOYERS?**

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Given the reality that many employers are going to have to enter into LPAs despite their questionable legality, it is important you understand the specific requirements of the law in the state or city in which you operate. Some employers often accept whatever form of LPA the union puts in front of them. This is not always the best course of action, as we have found that some unions present employers with LPAs that cover far more topics than any state law requires. It is important that you fully understand the requirements imposed by law so that you do not unwittingly enter into a LPA which is more onerous than it needs to be.

For instance, many unions are including requirements that union elections take place within 90 days, when an ordinary organizing campaign may take a year or more. Some often add language into LPAs eliminating the sacred secret ballot election process. Likewise, some unions are drafting LPAs to require “neutrality,” when often the law does not require actual neutrality. For instance, while Washington State’s proposed law would specifically require that employers remain “neutral,” California’s and Illinois’ laws only require that the employer not “disrupt” the union’s effort to communicate with employees. Those laws do not actually require cannabis employers remain neutral to those efforts.

It is also important that you thoroughly consider and vet the potential unions with whom you may enter into an LPA. Some unions have greater experience in the cannabis industry than others and are more flexible, while others are known for hard-nosed tactics that could make life less pleasant for you in the future. It also is likely that we will see more cannabis specific unions being formed, which may or may not be a better fit in the cannabis industry.

## **SHOULD EMPLOYERS CONSIDERING AN LPA RETAIN AN ATTORNEY?**

If you are considering entering into an LPA, you should certainly consult with an experienced labor attorney before proceeding. Most unions have vast experience negotiating LPAs in other industries, while cannabis employers are new to the process. Unions utilize template or form agreements which are very favorable to them on the shelf, ready to go. Cannabis employers, on the other hand, are often just learning about LPAs when they discover they need to execute one to obtain a license.

If you rush to accept whatever the union puts in front of you in order to obtain that valuable license, you may find that the short-term expediency may lead to long-term headaches. Retaining experienced labor counsel can help your business avoid this problem.

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