



# What Every California Cannabis Employer Needs To Know About Labor Unions

Insights

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California was one of the first states to establish a uniform regulatory and licensing regime for medical and adult-use cannabis. A key component of the state law is that an applicant for a cannabis license must enter into a “labor peace agreement” with a union as a condition to licensure. California cannabis employers need to know that not all labor peace agreements are the same. There could be significant lasting impacts to your business if you sign the wrong labor peace agreement. What do you need to know about this area of the law, and what are some considerations to keep in mind as you proceed?

## What Is A “Labor Peace Agreement”?

The first thing to understand is what we mean by a labor peace agreement. It is a private contract between an employer and a union that requires both parties to waive certain rights under federal labor law. While these agreements vary substantially depending on the circumstances, common terms include requiring the employer to remain neutral with respect to forming a union, granting third-party union organizers access to the employer’s facilities, providing the employee contact information, and prohibiting the union from engaging in economic activity like pickets and strikes.

## Key Components Of The Labor Peace Requirement Under California Law

California’s labor peace statute – the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) – requires applicants for a state cannabis license with **20 or more non-supervisory employees** to enter into a labor peace agreement with a labor organization. The agreement must contain at least three basic requirements:

- it must prohibit the union from engaging in picketing, work stoppages, boycotts, and other economic interference with the applicant’s business;
- it must prohibit the applicant from disrupting efforts by the union to communicate with, and attempting to organize and represent its employees; and
- it must provide the union access at reasonable times to areas in which the applicant’s employees work to meet with employees.

Additionally, the agreement cannot dictate how employees select the union. This is a significant departure from most labor peace agreements, which provide for specific recognition procedures like a secret ballot election or card check.

## The Timeline To Enter Into A Labor Peace Agreement

Initially, the timeframe to enter into a labor peace agreement was left completely vague. The MAUCRSA contains no reference to any timeframe and only states that the applicant shall provide a statement that it “will enter into, or demonstrate that it has already entered into, and abide by the terms of a labor peace agreement.”

A short time after the statute went into effect in 2018, however, the Bureau of Cannabis Control passed regulations that shed some light on the timeframe to achieve compliance. Under the regulations, if an employer had not entered into a labor peace agreement at the time of their application, they could attest that they would do so “**as soon as reasonably practicable after licensure.**”

As of January 1, 2020, the legislature established stricter procedures and timelines to achieve compliance. Under Assembly Bill 1291, applicants with 20 or more employees are required to provide a notarized statement that they will enter into, or demonstrate that they have already entered into, a labor peace agreement. Moreover, applicants with ***under 20 employees*** at the time of their application are now required to provide a notarized statement indicating that they will do so ***within 60 days of employing their 20th employee***. AB 1291 also adds administrative teeth by empowering the Bureau of Cannabis Control to suspend or permanently revoke licenses for failing to comply with the requirement.

This new standard creates an inexplicable inequity between smaller and larger cannabis employers. Whereas larger employers are presumably still subject to the “as soon as reasonably practicable after licensure” standard, smaller employers will only have 60 days from hiring their 20th non-supervisory employee to complete the process or otherwise face revocation of their license. Since vetting the correct union and negotiating terms may take weeks or even months, you are encouraged to begin this process as soon as possible if you are seeking to apply for or renew a state license.

## Terms Not Required By The MAUCRSA

Although the statutory requirements of a valid labor peace agreement are limited, you should expect unions to request additional terms to be included in the labor peace agreement. Generally, after a union is established at a company, the parties must bargain in good faith over wages, hours, and other mandatory subjects of collective bargaining. However, neither the MAUCRSA nor federal law requires an employer to enter into a collective bargaining agreement.

Bargaining a first contract can be a painstaking process taking up to a year or more. Therefore, you should be wary of terms that establish an unreasonably short timeframe to engage in and/or complete collective bargaining or that require open items to be submitted for decision by a neutral third-party (known as “interest arbitration”).

You should also carefully avoid language that expands the scope of the agreement beyond the licensee or that extends its reach to “successor” entities. Such overbroad terms may result in the unionization of employees that are not covered by the license and may hamper corporate

unionization of employees that are not covered by the license and may hamper corporate transactions. And while union access is required by the MAUCRSA, you should ensure these provisions are narrowly drawn to minimize disruption of operations while assuring that the union will not disparage your company, products, or managers.

## **Conclusion**

The impact of the MAUCRSA's labor peace agreement requirement and the subsequent passage of AB 1291 on the California cannabis industry cannot be overstated. While these measures do not guarantee unionization, they substantially increase the likelihood of it.

Because of this reality, you should brace for increased demands on labor costs, time, and expense administering the collective bargaining relationship, and recognize that you will have decreased flexibility over operations and employee relations. Cannabis employers should consult labor counsel to perform a due diligence on local unions you are considering, help you negotiate narrow labor peace terms, and provide critical supervisor training regarding compliance with labor laws.

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*This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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