

CANNABIS IN THE WORKPLACE

A Comparative Law Review of
Employee Rights and Employer Obligations



CANNABIS IN THE WORKPLACE – COMPARATIVE LAW REVIEW

ALASKA

LEGALIZATION

Medical Cannabis or Medicinal CBD Legal – Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Maryland, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia, Wyoming

Medical & Recreational Cannabis Legal – Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, Washington, Washington DC

Not Legal – Idaho, Nebraska, South Dakota

A map of the United States where states are color-coded to indicate their cannabis laws. Dark blue states (Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, Washington, Washington DC) represent medical and recreational legalization. Red states represent medical cannabis or medicinal CBD legalization. Light blue states (Idaho, Nebraska, South Dakota) represent states where cannabis is not legal. The map also includes Alaska and Hawaii.



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Comparative Law Review on the Impact of Cannabis Legalization in the U.S. Workplace

Following the passage of California's landmark Compassionate Use Act of 1996, a number of states announced measures legalizing cannabis for medical and then recreational use. Thirty-three states now permit the medicinal use of marijuana, and 11 states and the District of Columbia allow recreational use. With legislation pending across the country, these numbers are certain to grow.

As these laws expand in their geographic and substantive scope, employers increasingly find themselves challenged to balance quickly evolving state and municipal laws and court decisions against the federal Controlled Substances Act, which effectively bars the distribution and possession of cannabis, and their interests in maintaining productive and safe workplaces.

This survey aims to provide a view as to whether legalization measures adopted in the United States:

- Impact employers' rights to engage in pre-employment drug testing
- Obligate employers to accommodate cannabis use for treatment of medical conditions
- Provide employees employment protections for off-duty cannabis use
- Require employers or their workers' compensation carriers to reimburse cannabis as a treatment for workplace injuries.

The survey currently reveals several trends emerging across these fronts.

Drug Testing and Employee Rights

With the exception of Nevada, which banned pre-employment drug testing for cannabis, and the City of New York, which implemented a similar local ban on testing for marijuana, the various states' legalization statutes have not curbed employers' existing rights vis-à-vis drug-testing (1) applicants for marijuana use or (2) existing employees for suspected on-duty use. Drug testing remains governed by a patchwork of statutory rules and privacy cases in each state, and not every state allows the same type or kinds of testing.

The question generally is whether employers can act on information once they learn an applicant or employee tests positive for cannabis. Indeed, after passing laws permitting medicinal or recreational use of cannabis, a growing number of states developed laws providing employee protections for lawful off-duty use:

- Arkansas and Illinois passed laws prohibiting adverse actions against persons because of their status as medical marijuana patients.
- Connecticut and Maine more expressly recognize an employee's right to off-duty cannabis use and passed laws prohibiting adverse employment actions based on such use.
- Statutes and case law in other states such as Maryland, Massachusetts and Nevada dictate employers must affirmatively engage in the interactive process and possibly accommodate an employee's use of cannabis as a medical treatment for a disability.

- Other states, including Vermont, do not address employee protections directly through their legalization statutes, but nevertheless require employers to consider accommodating medical marijuana use for the treatment of a disability through existing state disability discrimination laws.
- In those states with employee rights statutes, exceptions typically exist so an employer need not violate federal law or contractual obligations, place a cannabis user in a safety-sensitive position or permit on-duty use in complying with the statutes.
- Surprisingly, some of the noteworthy front-runner states in cannabis legalization, such as Colorado, Washington and California, still do not recognize any employee protections for cannabis use.

Implications for Workers' Compensation

The use of medical cannabis to treat work-related injuries and conditions, although affirmatively authorized in only a small number of states, has become a growing trend. Across the country, there is a patchwork of state statutory and case law involving medical cannabis and workers' compensation.

The states that have authorized reimbursement for the cost of medical cannabis to injured workers have done so through case law. See, e.g., *Vialpando v. Ben's Automotive Services*, 331 P.3d 975 (N.M. Ct. App. 2014), cert denied, 331 P.3d 924 (N.M. 2014). Some states specifically exclude reimbursement for medical cannabis in workers' compensation cases. In several of the states where medical cannabis has been legalized, state law specifically states that government or private health insurance providers or health care service plans are not required to reimburse patients for medical marijuana. In at least one state, this provision specifically includes employers as well.

Although some states specifically exclude reimbursement for the cost of medical cannabis, the fact that a statute "does not require" reimbursement may allow a judge to interpret this provision to permit reimbursement under the state's workers' compensation laws. See *Appeal of Panaggio*, 205 A.3d 1099 (N.H. 2019). However, the federal illegality of marijuana under the Controlled Substances Act still looms large in the area of workers' compensation. See *Bourgoin v. Twin Rivers*, 187 A.3d 10 (2018).



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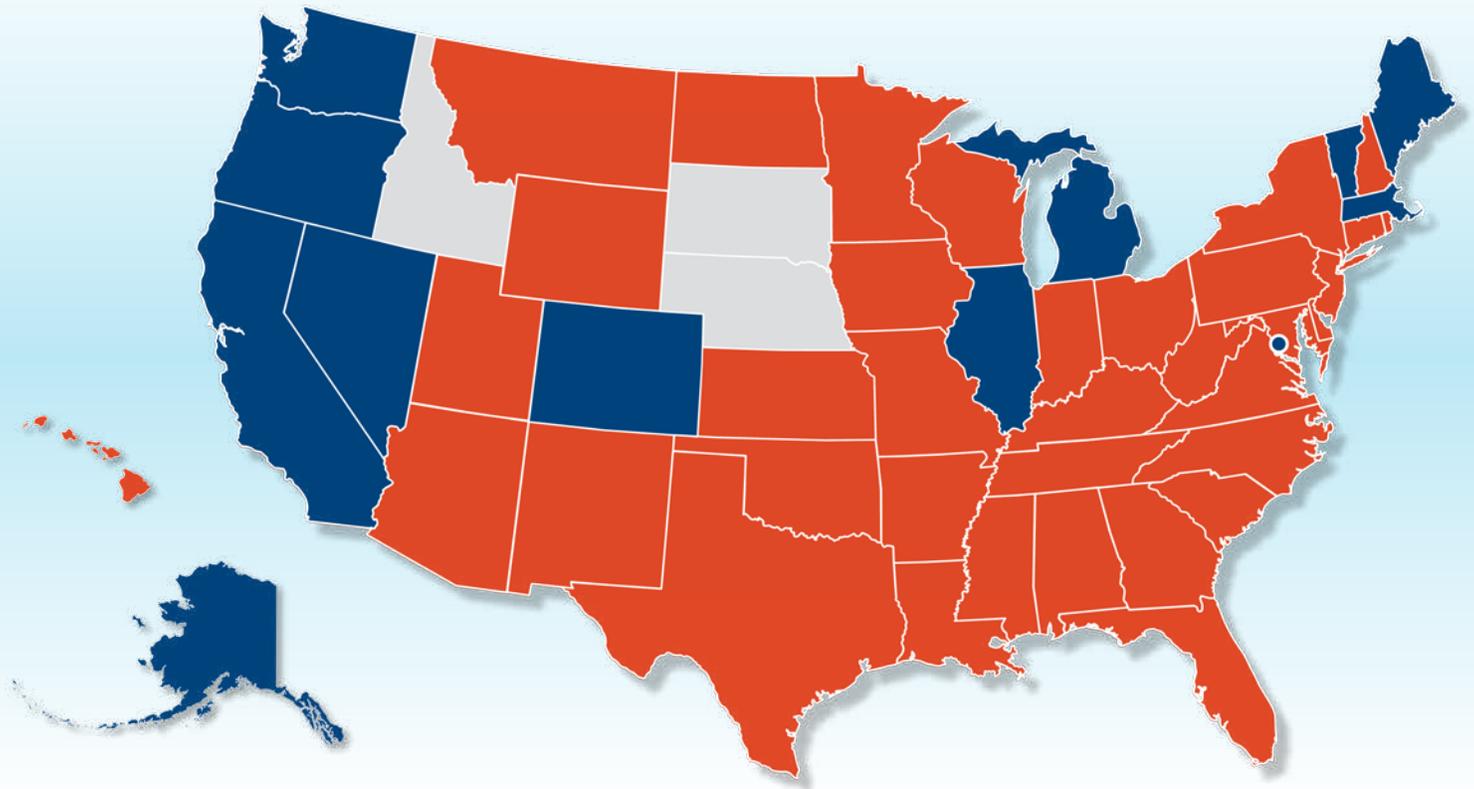
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LEGALIZATION

Medical Cannabis or Medicinal CBD Legal – Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Maryland, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia, Wyoming

Medical and Recreational Cannabis Legal – Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, Washington, Washington, DC

Not Legal – Idaho, Nebraska, South Dakota




**Medical Cannabis or
Medicinal CBD Legal**


**Medical and Recreational
Cannabis Legal**

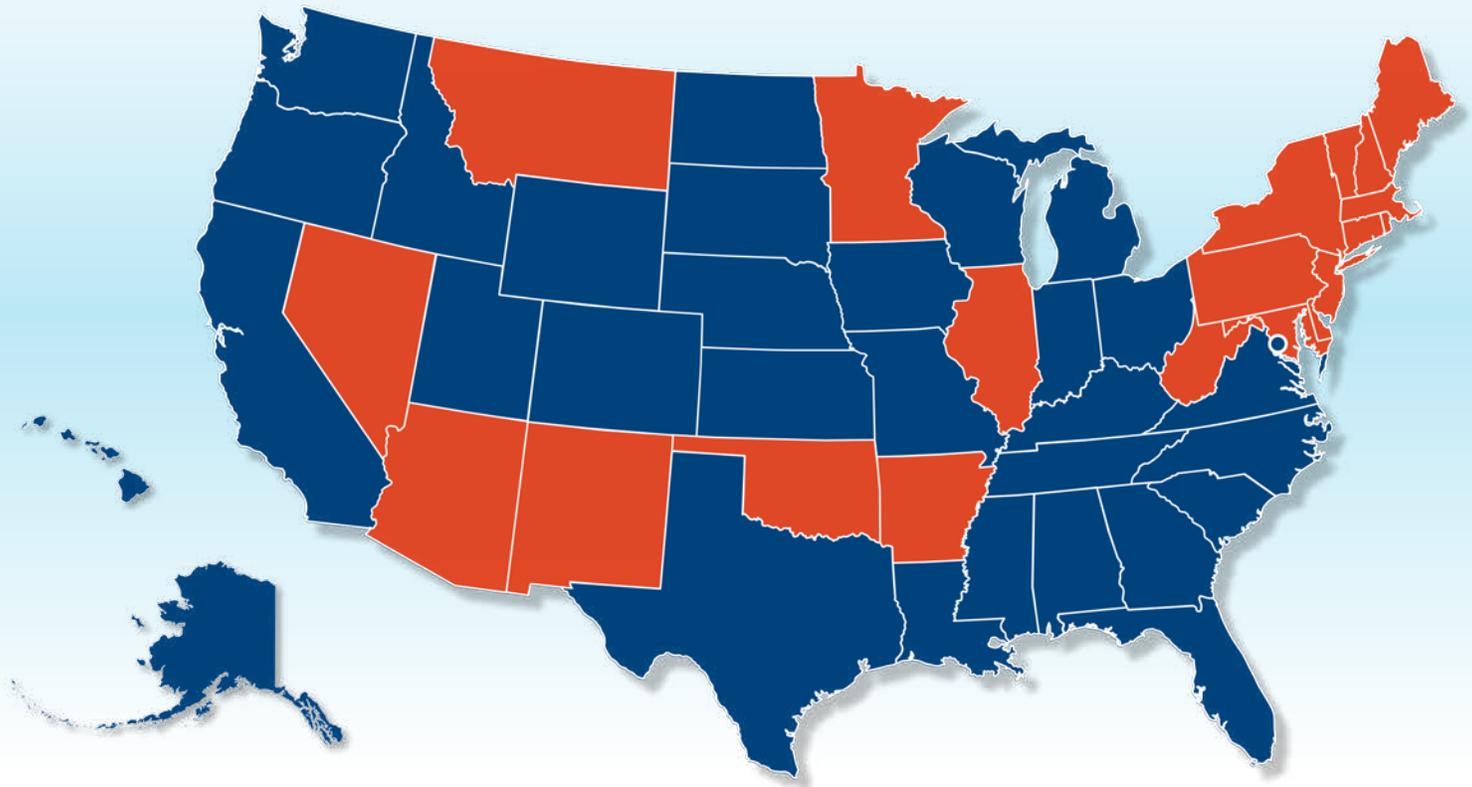

Not Legal

Recognized Protections or Accommodations for Medical Cannabis Use by Employees –

Arizona, Arkansas, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, Vermont and West Virginia

No Recognized Protections for Medical Cannabis Use by Employees –

Alabama, Alaska, California, Colorado, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Washington, DC, Wisconsin and Wyoming



**Recognized Protections
or Accommodations
for Medical Cannabis Use
by Employees**



**No Recognized Protections
for Medical Cannabis Use
by Employees**

REIMBURSEMENT IN WORKERS' COMPENSATION

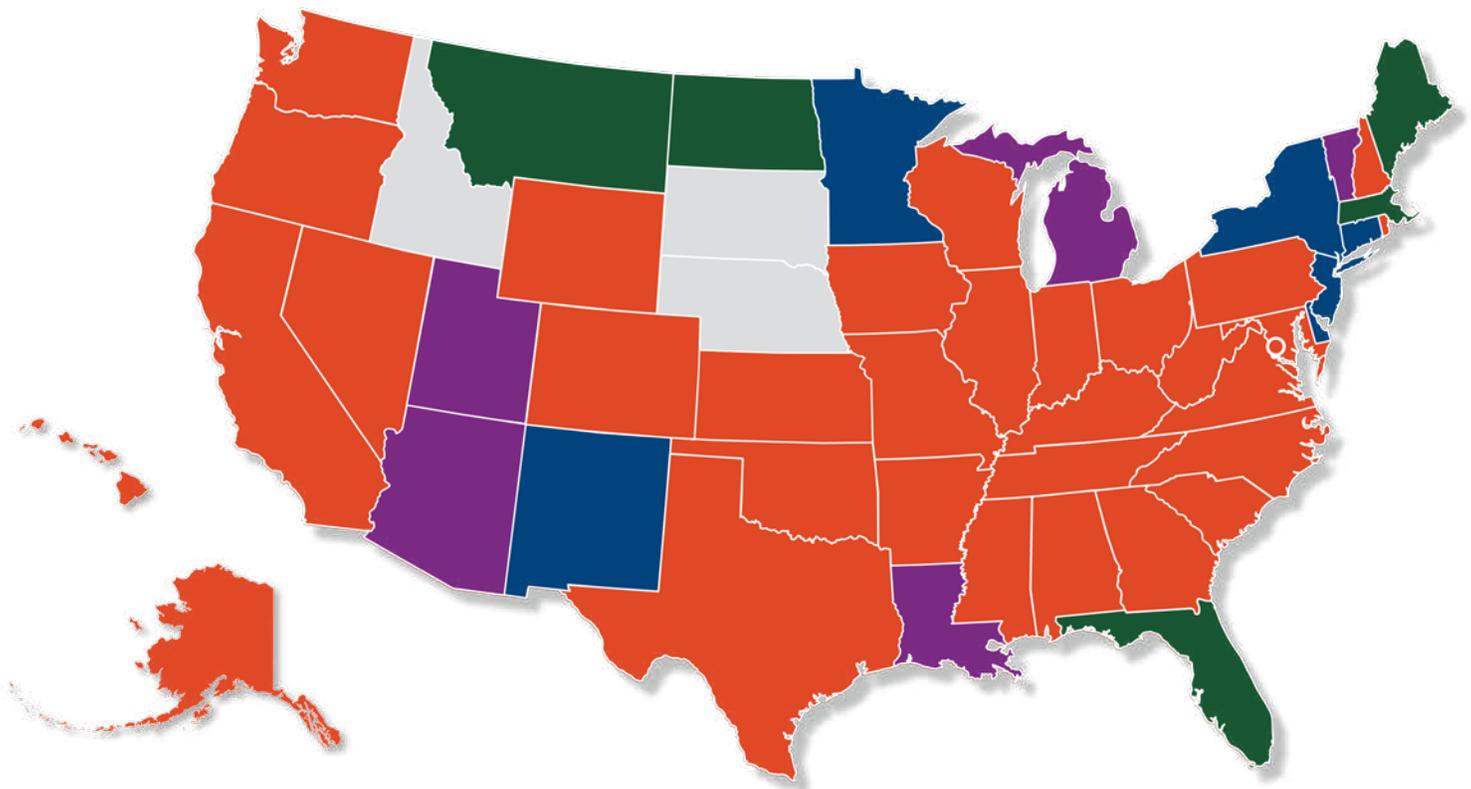
Reimbursement Required – Connecticut, Delaware, Minnesota, New Jersey, New Mexico, New York

Reimbursement Prohibited – Florida, Maine, Massachusetts, Montana, North Dakota

Reimbursement Not Required per Statute – Arizona, Louisiana, Michigan, Utah, Vermont

No Precedent – Alabama, Alaska, Arkansas, California, Colorado, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Mississippi, Missouri, North Carolina, New Hampshire, Nevada, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, Washington DC, West Virginia, Wisconsin, Wyoming

No Legal Cannabis – Idaho, Nebraska, South Dakota




**Reimbursement
Required**


**Reimbursement
Prohibited**


**Reimbursement
Not Required
Per Statute**


No Precedent


**No Legal
Cannabis**

ALABAMA



Medicinal CBD Oil Only

Pre-Employment Drug Testing

N/A

Employers' Obligations to Accommodate Medical Use

N/A

Employees' Rights Against Discrimination for Off-Duty Use

N/A

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

N/A

ALASKA



Medical & Recreational Cannabis Legal

Pre-Employment Drug Testing

Compliance with Alaska's drug testing statute is voluntary for Alaska employers. The statute does not specify the circumstances under which testing is authorized or prohibited. Employers that choose to comply with the drug testing law may only conduct testing if they have a written drug and alcohol testing policy. An employer with a written policy that complies with the law may test for drugs and alcohol if it has a "job-related purpose" consistent with both "business necessity" and the terms of its written policy under the following circumstances:

- Pre-employment testing.
- Random testing.
- Reasonable suspicion of intoxication.
- To investigate possible individual impairment.
- To investigate workplace accidents.
- To maintain safety.
- To maintain productivity. (Alaska Stat. Ann. § 23.10.620(c) and (d).)

Random drug and alcohol tests must use "a scientifically valid method that ensures that all covered employees have an equal chance of being selected." (Alaska Stat. Ann. § 23.10.699(8)).

Employers' Obligations to Accommodate Medical Use

Although Alaska law authorizes the use of recreational and medical marijuana, there is no requirement that Alaska employers accommodate the use of marijuana in the workplace (Alaska Stat. Ann. §§ 17.37.040(d) and 17.38.220(a)). Employers are not required to amend policies restricting the use of marijuana by their employees (Alaska Stat. Ann. § 17.38.220(a)).

Employees' Rights Against Discrimination for Off-Duty Use

A person may bring a claim for damages if the employer:

Based its actions on a false positive result; knew or should have known there was an error; or ignored the true test result because of reckless or malicious disregard for the truth or the willful intent to deceive or be deceived. (Alaska Stat. Ann. § 23.10.600(b).)

However, the employer is not liable for monetary damages if its actions based on a false positive were reasonable and in good faith. (Alaska Stat. Ann. § 23.10.600(c)(2)). There is also a rebuttable presumption that the test result was valid if the employer complied with the drug testing statute. (Alaska Stat. Ann. § 23.10.600(c)(1)).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

N/A

ARIZONA

Medical Cannabis Legal

Pre-Employment Drug Testing

Must have written policy. Cannot discriminate against medical marijuana cardholders unless it would cause the employer to lose money or licensing under federal law or regulations, or if the employee is in a “safety position.” (Arizona Drug Testing of Employees Act and Arizona Medical Marijuana Act.)

Employers’ Obligations to Accommodate Medical Use

Not subject to punishment to any licensing authority or occupational authority for medical use. Employer cannot discriminate against employee unless it causes the employer to lose licensing under federal law or regulations. (Arizona Medical Marijuana Act.)

Employees’ Rights Against Discrimination for Off-Duty Use

Cannot discriminate against medical cardholders for positive test unless it could cause employer to lose money or licensing under federal law or regulations. Employees can sue an employer for punishment arising from testing positive unless the employer can show that the employee was impaired or ingesting cannabis while at work. (Arizona Medical Marijuana Act.)

Employers’/Carriers’ Obligations to Reimburse/Pay for Medical Cannabis in Workers’ Compensation

Workers’ compensation, private health insurance or governmental assistance programs are not required to reimburse for medical marijuana. (Arizona Medical Marijuana Act.)

ARKANSAS



Medical Cannabis Legal

Pre-Employment Drug Testing

Arkansas is a voluntary drug-free workplace state. Employers who have a drug-free workplace program are required to drug test applicants who have received conditional offers.

Employers' Obligations to Accommodate Medical Use

An employer shall not discriminate against an applicant or employee in hiring, termination or any term or condition of employment or otherwise penalize an applicant or employee based upon the applicant's or employee's past or present status as a medical marijuana patient. However, employers are not restricted from establishing a substance abuse or drug-free workplace and disciplining employees for possessing, ingesting or being under the influence of cannabis at the workplace.

Employees' Rights Against Discrimination for Off-Duty Use

An employer shall not discriminate against an applicant or employee in hiring, termination or any term or condition of employment or otherwise penalize an applicant or employee based upon the applicant's or employee's past or present status as a medical marijuana patient.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

No laws in place obligating employers to reimburse for medical cannabis in workers' compensation cases.

CALIFORNIA



Medical and Recreational Cannabis Legal

Pre-Employment Drug Testing

In California, employers may generally conduct pre-employment drug testing after providing a conditional job offer to an applicant if:

1. The applicant receives notice of the drug-testing requirement.
2. The collection process minimizes intrusiveness.
3. The test is administered in a reasonable fashion, such as part of a lawful pre-employment medical examination required of all job applicants.
4. Procedural safeguards restrict access to the test results. (*Wilkinson v. Times Mirror Corp.*, 215 Cal. App. 3d 1034, 1048-50 (1989))

Employers' Obligations to Accommodate Medical Use

Employers are not required to accommodate medical marijuana use on employer property or premises or during working hours (Cal. Health & Safety Code § 11362.785(a)).

The California Supreme Court held that it is not a violation of public policy or California's Fair Employment and Housing Act (Cal. Gov't Code §§ 12900 to 12996) to dismiss a patient employee from employment because the employee tested positive for a chemical found in marijuana (*Ross v. RagingWire Telecomm., Inc.*, 174 P.3d 200 (Cal. 2008)).

The Americans with Disabilities Act (ADA) does not protect individuals using illegal drugs including marijuana, but drugs taken under a licensed health professional's supervision are not included in the definition of illegal drugs (42 U.S.C. § 12210(a), (d)(1)). The Ninth Circuit has found that the ADA does not protect medical marijuana use or require accommodation for its use, even when legalized under state law because:

The ADA expressly excludes from its definition of "qualified individual with a disability" those individuals currently engaging in the illegal use of drugs.

Marijuana remains an illegal drug under the federal CSA. (*James v. City of Costa Mesa*, 700 F.3d 394, 397 (9th Cir. 2012)).

Employees' Rights Against Discrimination for Off-Duty Use

The Adult Use of Marijuana Act (AUMA) expressly states that that it should not be construed or interpreted to:

- Restrict employer rights and obligations to maintain a drug and alcohol-free workplace.
- Require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace.
- Affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, and prevent employers from complying with state or federal law. (Cal. Health & Safety Code § 11362.45.)

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

California law specifically provides that nothing in the state's medical marijuana program requires insurers, "a governmental, private, or any other health insurance provider or health care service plan," to be liable for reimbursing for medical marijuana use (Cal. Health & Safety Code § 11362.785(d)).

COLORADO

Medical and Recreational Cannabis Legal

Pre-Employment Drug Testing

Colorado does not have a statute regarding drug testing and employers are allowed to conduct drug testing.

Article XVIII Section 16-6 of CO Constitution states nothing in this section shall require an employer to permit or accommodate the use of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees.

Employers' Obligations to Accommodate Medical Use

No obligation to accommodate medical use.

Article XVIII Section 16-6 of CO Constitution states nothing in this section shall require an employer to permit or accommodate the use of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees.

Employee can be terminated for use of medical marijuana in accordance with the Medical Marijuana Amendment of state constitution. (*Coats v. Dish Network* 350 P.3d 849 (2015)).

Employees' Rights Against Discrimination for Off-Duty Use

Employee can be terminated for use of medical marijuana in accordance with the Medical Marijuana Amendment of state constitution. (*Coats v. Dish Network* 350 P.3d 849 (2015)).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Workers Compensation system does not explicitly provide for use of medical marijuana as treatment for any condition, thus insurers are not specifically required to pay for it.

However, C.R.S. § 8-42-101 requires payment of benefits reasonably needed at the time of the injury to cure and relieve the employee from the effects of the injury. If a physician prescribes medical cannabis for symptom relief, this could implicate the WC benefits statute. It's currently a grey area due to lack of a specific statute or case law analyzing the issue further, but litigation on the issue in the near future is anticipated given that such claims are actively being made.

CONNECTICUT



Medical Cannabis Legal

Pre-Employment Drug Testing

Pre-employment testing allowed only if: (1) applicant is informed in writing at the time of application of employer's intent to drug test; (2) the test utilized reliable methodology that produced a positive result; (3) the positive test was confirmed by a second test independent of the first test and used a gas chromatography and mass spectrometry methodology or the equivalent; (4) the applicant is given a copy of the positive test result; and, (5) disclosure of the test is limited to necessary persons. (Conn. Gen. Stat. § 31-51v.).

Employers' Obligations to Accommodate Medical Use

Employer must accommodate but can prohibit the use of intoxicating substances during work hours and discipline an employee for being under the influence of intoxicating substances during work hours. (*Noffsinger v. SSC Niantic Operating Co., LLC*, 338 F. Supp. 3d 78 (D. Conn. 2018)).

Employees' Rights Against Discrimination for Off-Duty Use

Employee can use medical marijuana outside working hours and in the absence of any influence during working hours. (*Noffsinger v. SSC Niantic Operating Co., LLC*, 338 F. Supp. 3d 78 (D. Conn. 2018)).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Medical marijuana is reimbursable and constitutes reasonable and necessary medical treatment. (*Petrini v. Marcus Dairy*, 6021 CRB-7-15-7, 2016 WL 6659149 (Conn. Work. Comp. Com. May 12, 2016)).

DELAWARE



Medical Cannabis Legal

Pre-Employment Drug Testing

Testing is required for school bus drivers, home healthcare practitioners, nursing home staff, and certain security-sensitive positions with the Department of Corrections.

The DMMA is thought to prevent an employer from maintaining and enforcing zero-tolerance policies against medical marijuana use.

Employers' Obligations to Accommodate Medical Use

With only limited exceptions, employers may not discriminate against an individual in hiring, termination or any other term or condition of employment based on the individual's status as a registered qualifying patient. This prohibition against discrimination includes a positive drug test unless the individual used, possessed or was impaired by marijuana on the employer's premises or during the hours of employment.

Employees' Rights Against Discrimination for Off-Duty Use

Section 4905A of the DMMA prohibits employment-related discrimination based either upon status as a medical marijuana cardholder or a qualifying patient's positive drug test. At least one Delaware court has found the DMMA's anti-discrimination language implies a right of action to provide patients an enforcement mechanism. (*Chance v. Kraft Heinz Foods Co.*)

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Although there does not appear to be any definitive rules at this time, in *Kalix v. Giles & Ransom*, the Delaware Industrial Accident Board required payment of an employee's medical marijuana treatment. Apparently this decision came in part because medical marijuana is not currently subject to the Delaware Workers' Compensation Fee Schedule.

FLORIDA



Medical Cannabis Legal

Pre-Employment Drug Testing

Pre-employment testing is lawful. Fla. Stat. 381.986 (15) specifically allows an employer to create, continue or enforce a drug free policy while at the workplace. Employers can drug test for marijuana under Fla. Stat. § 440.102.

Employers' Obligations to Accommodate Medical Use

No obligation to accommodate medical marijuana use. Florida employers are free to prohibit its use as a condition of employment. Although the statute legalizes medical marijuana, it specifically rejects the idea of creating a cause of action for wrongful termination based on an employee's marijuana use.

Employees' Rights Against Discrimination for Off-Duty Use

Not applicable.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Workers' Compensation reimbursement for medical marijuana is prohibited by statute.

In addition, in *Jones v. Grace Health Center*, a workers' compensation judge found that requiring insurers to pay for a worker's medical marijuana would violate the Controlled Substances Act.

GEORGIA



Medicinal CBD Oil Only

Pre-Employment Drug Testing

Pre-employment testing of job applicants is legal. If an employer wants to qualify for a workers' compensation premium discount, it must test applicants post-offer. The discount shall be applied on a pro rata basis as of the date that the employer receives certification by the State Board of WC. Certification by an employer shall be required for every year that such a premium discount is granted. O.C.G.A. 34-9-412.

Employers' Obligations to Accommodate Medical Use

The act permitting medical cannabis use states "nothing in the Act shall require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing marijuana in any form, or to affect the ability of an employer to have a written zero tolerance policy prohibiting the on-duty, and off-duty, use of marijuana, or prohibiting any employee from having a detectable amount of marijuana in such employee's system while at work." O.C.G.A. 16-12-191.

Employees' Rights Against Discrimination for Off-Duty Use

Employer can have a policy prohibiting off-duty use and may discipline employees for positive drug tests.

The Medical Marijuana Act does not affect the ability of an employer to have a written zero tolerance policy prohibiting the off duty use of marijuana.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

There are no laws in place obligating employers to reimburse employees for medical cannabis in workers' compensation cases.

In fact, no compensation shall be allowed for an injury or death due to intoxication by alcohol or while under the influence of marijuana or a controlled substance except as may have been lawfully prescribed by a physician for such employee but if any amount of marijuana or controlled substance is in the employee's bloodstream within 8 hours of the incident, there shall be a rebuttable presumption that the accident and injury or death were caused by the ingestion of marijuana and/or controlled substance. If the employee unjustifiably refuses to submit to a scientific and reliable test, then there shall be a rebuttable presumption that the accident and injury or death were caused by the ingestion of marijuana or controlled substance.

HAWAII



Medical Cannabis Legal

Pre-Employment Drug Testing

The Substance Abuse Testing Law (SATL) does not specify the circumstances under which testing is authorized or prohibited. The SATL only requires that, before conducting the test, the employer provide the applicant or employee with both:

- 1) Advance written notice of the specific substances to be tested for.
- 2) A statement that over-the-counter medications or prescribed drugs may result in a positive test result. (HRS § 329B-5(a); HAR § 11-113-5(a).)

Employers' Obligations to Accommodate Medical Use

Under the Hawaii statute, medical cannabis use is unauthorized for a patient's workplace (HRS § 329-122(e)(2)(B)).

Employees' Rights Against Discrimination for Off-Duty Use

An aggrieved applicant or employee may file a claim under the Substance Abuse Testing Law (SATL). If the applicant or employee prevails, she may obtain:

Injunctive relief; fines ranging from \$1,000 to \$10,000 for each violation; and/or reasonable court costs and attorneys' fees.

The SATL does not limit an aggrieved party's rights to collect actual damages. (HRS § 329B-7.)

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

N/A

IDAHO



Not Legal

Pre-Employment Drug Testing

Yes, permitted as a condition of employment – Idaho Employer Alcohol and Drug-Free Workplace Act (I.C. § 72-1701, et seq.)

Employers' Obligations to Accommodate Medical Use

None; no form of legal marijuana in the state.

Employees' Rights Against Discrimination for Off-Duty Use

None; no form of legal marijuana in the state.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

None; no form of legal marijuana in the state.

ILLINOIS



Medical and Recreational Cannabis Legal

Pre-Employment Drug Testing

Workplace testing is allowed by employer and employer may discipline or terminate an employee for violating employer's employment policies or workplace drug policy.

Employers' Obligations to Accommodate Medical Use

Compassionate Use of Medical Cannabis Program Act allow patients diagnosed with specified medical conditions to possess and use medical marijuana. The CUMCPA prohibits employers from discriminating against individuals based upon their status as a registered medical cannabis patient. However, the CUMCPA also makes clear it does nothing to limit an employer's right to maintain a zero-tolerance workplace drug policy, preventing on-duty consumption or disciplining an employee whose failure of a drug test puts the employer in violation of a federal law or causes it to lose federal contractor standing. An employer must afford the employee a "reasonable opportunity" to contest a finding of being under the influence if an adverse employment action is going to be taken.

Employees' Rights Against Discrimination for Off-Duty Use

Cannabis Act amends the Right to Privacy in the Workplace Act, which prohibits employers from restricting employee use of "lawful products" away from work.

*However, interpretation thus far has been that even if an employee ingests marijuana legal in IL while off-duty, but the employer has a drug-free workplace policy and an employee tests positive for marijuana in his system from a random drug test, the Cannabis Act should allow an employer to terminate that employee even if not impaired at work without violating the law.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Illinois Compassionate Use of Medical Cannabis Pilot Program Act remains silent on the issue. Prevailing thought provides that workers' compensation carriers in IL will be required to pay for medical cannabis if all of the requirements of the Act are met (high evolving area currently).

INDIANA



Medicinal CBD Oil Only

Pre-Employment Drug Testing

Yes, permitted to require drug tests of employees who have been or are in drug rehab programs.

Employers' Obligations to Accommodate Medical Use

Not applicable; medicinal marijuana not fully legal.

Employees' Rights Against Discrimination for Off-Duty Use

None; all forms of marijuana are banned. CBD for specific medical conditions allowed only.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Not applicable; medicinal marijuana not fully legal.

IOWA



Medical Cannabis Legal

Pre-Employment Drug Testing

Yes, permitted and may refuse to hire an applicant or terminate an employee.

Employers' Obligations to Accommodate Medical Use

No protections on accommodations at this time.

Employees' Rights Against Discrimination for Off-Duty Use

Employer can have a policy prohibiting off-duty use and may discipline employees for positive drug tests.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

There are no laws in place obligating employers to reimburse employees for medical cannabis in workers' compensation cases.

KANSAS

Medicinal CBD Oil Only

Pre-Employment Drug Testing

Not applicable; drug testing is up to the employer, there are no legal form of THC products in the state.

Employers' Obligations to Accommodate Medical Use

Not applicable; medicinal marijuana not fully legal.

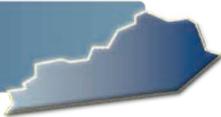
Employees' Rights Against Discrimination for Off-Duty Use

Not applicable; any use remains illegal and employers may ban illegal behavior.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Not applicable; medicinal marijuana not fully legal.

KENTUCKY



Medicinal CBD Oil Only

Pre-Employment Drug Testing

Kentucky has no general drug testing law. However, there are drug and alcohol testing laws applicable to miners and school bus drivers and mechanics.

Employers in Kentucky may apply to be certified by the Kentucky Department of Workers' Claims (DWC) as having implemented a drug-free workplace program.

Employers' Obligations to Accommodate Medical Use

None. There is no medical marijuana legalization in Kentucky (other than authorizing high CBD, low-THC products which is very limited and for limited individuals).

Employees' Rights Against Discrimination for Off-Duty Use

None. There is no medical marijuana legalization in Kentucky (other than authorizing high CBD, low-THC products which is very limited and for limited individuals).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

None. There is no medical marijuana legalization in Kentucky (other than authorizing high CBD, low-THC products which is very limited and for limited individuals).

LOUISIANA



Medical Cannabis Legal

Pre-Employment Drug Testing

Pre-employment drug testing is allowed under Louisiana law.

Employers' Obligations to Accommodate Medical Use

Louisiana allows limited medical cannabis use restricted to certain medical disabilities. Louisiana recently expanded the use of medical marijuana (previously limited to consumption by edibles, oils and extracts) to include inhalation using a medical device similar to an asthma inhaler. However, Louisiana remains silent as to any protections afforded to employees who utilize medical marijuana from employment discipline.

Employees' Rights Against Discrimination for Off-Duty Use

No protection given to employees for testing positive as a result of off-duty cannabis usage.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

In 2018, the Louisiana legislature enacted Act 708, which states that "employers and their workers' compensation insurers shall not be obliged or ordered to pay for medical marijuana in claims arising under Title 23 of the Louisiana Revised Statutes of 1950, the Louisiana Workers' Compensation Law."

MAINE



Medical and Recreational Cannabis Legal

Pre-Employment Drug Testing

An employer may not require, request or suggest that any employee or applicant submit to a substance use test except in compliance with this section. All actions taken under a substance use testing program must comply with this subchapter, rules adopted under this subchapter and the employer's written policy approved under section 686 – 26 MRSA c. 7 §683.

Employers' Obligations to Accommodate Medical Use

No employer may refuse to employ a person solely for their status as a qualifying patient. 22 MRSA §2423-E(2).

Employees' Rights Against Discrimination for Off-Duty Use

Employer may not discriminate. Employer or landlord may not refuse to employ or otherwise penalize a person 21 years of age or older solely for that person's consuming marijuana outside of the employer's property. 7 MRSA c. 417 §2454 (3).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Bourgoin v. Twin Rivers, 187 A.3d 10 (2018) – Maine Court of Appeals held that requiring reimbursement for medical marijuana would violate the CSA.

MARYLAND



Medical Cannabis Legal

Pre-Employment Drug Testing

Permitted to Test for Marijuana – Maryland Health-General § 17-214 (Controlled Substance Testing by Employer).

Employers' Obligations to Accommodate Medical Use

Employer has obligation to accommodate medical use, consistent with state law requirements; however, does not need to accommodate if employee is under influence and performing work that would constitute negligence, professional malpractice or operating/control of a vehicle, boat, etc.; smoking marijuana in any public place, motor vehicle, or private property if policy prohibits such use. (Md. Health-General § 13-3301-13-3314)

Employees' Rights Against Discrimination for Off-Duty Use

As of January 2020, Maryland has decriminalized marijuana, but individuals can still receive fines for use, etc.

Medicinal users may have state law protections if associated with condition where medical cannabis is prescribed.

However, Employers may test employees (regardless if employees used medicinal marijuana off duty) if they appear to be under the influence of marijuana, and can demonstrate a legitimate business need (safety of employee and others in the workplace, use in public places, if acts while under the influence would constitute negligence or professional malpractice, etc.).

Thus, employees may be protected from medicinal use (for off duty use), but they would still need to comply with employer policies (not report for work if under the influence) on drug use provided the employer has a legitimate business reason.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

There is no precedent obligating employers to reimburse employees for medical cannabis in workers' compensation cases.

MASSACHUSETTS



Medical and Recreational Cannabis Legal

Pre-Employment Drug Testing

Failure of a drug test can be a legitimate and nondiscriminatory reason to reject an applicant for employment so long as the decision is supported by adequate reasons and credible evidence. (*Bos. Police Dep't v. Campbell*, 96-3674-B, 1997 Mass. Super. LEXIS 285 (July 23, 1997)).

Employers' Obligations to Accommodate Medical Use

Any person meeting the requirements of the Medical Marijuana Act shall not be...denied any right or privilege for such actions. Employer has a duty to engage in interactive process to determine if there are equally effective medical alternatives to [marijuana] that would not be in violation of company policy. (*Barbuto v. Advantage Sales & Mktg.*, 78 N.E.3d 37 (2017)).

Employees' Rights Against Discrimination for Off-Duty Use

(See previous) - *Barbuto v. Advantage Sales & Mktg.*, 78 N.E.3d 37 (2017).

(e) Employment. This chapter shall not require an employer to permit or accommodate conduct otherwise allowed by this chapter in the workplace and shall not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees. (Mass. Ann. Laws ch. 94G, § 2).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

"Nothing in this law requires any health insurance provider, or any government agency or authority, to reimburse any person for the expense of the medical use of marijuana." (House No. H.3885, Chapter 369, Section 7(B) (2012)).

In *Daniel Wright v. Pioneer Valley*, DIA Board No. 04387-15, the Massachusetts Department of Industrial Accidents upheld the decision of an administrative judge denying reimbursement for medical marijuana, finding that the Controlled Substances Act preempted state law.

MICHIGAN



Medical and Recreational Cannabis Legal

Pre-Employment Drug Testing

Employers still have the right to prohibit marijuana use on the job — and to test for it.

Employers' Obligations to Accommodate Medical Use

The employer has the absolute right to insist that the employee be drug free and the employer can test for marijuana list.

Employees' Rights Against Discrimination for Off-Duty Use

An employee that fails a drug test (random or scheduled) can be terminated/disciplined in accordance with employer's policy.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

The Michigan Legislature specifically exempted employers from having to pay for medical marijuana.

MINNESOTA



Medical Cannabis Legal

Pre-Employment Drug Testing

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 the person’s status as a qualified patient or a qualified patient’s positive drug test for cannabis components or metabolites. However, this protection has an exception if the failure to discriminate “would violate federal law or regulations or cause an employer to lose a monetary or licensing-related benefit under federal law or regulations[.]”

Employers’ Obligations to Accommodate Medical Use

Nothing in Minnesota’s Medical Cannabis law allows an employee to use, possess, or be impaired by medical cannabis while on duty. Neither the Minnesota Human Rights Act (MHRA) nor the ADA requires the accommodation of medical marijuana use, however employers may be obligated to accommodate the underlying condition itself.

The Minnesota Human Rights Act (MHRA) also does not require employers to accommodate use of marijuana, or impairment, at the place of employment or during hours of employment but employers may be obligated to accommodate the underlying condition, similar to that of the ADA.

Employees’ Rights Against Discrimination for Off-Duty Use

The Minnesota Lawful Consumable Products Act (MLCPA) provides that private employers may not refuse to hire a job applicant or discipline an employee because they have engaged in the use of lawful consumable products, if use takes place off the employer’s premises and during nonworking hours. As medical marijuana is lawful under state law, employers could be prohibited from adverse action against employees who engaged in such activity. However, the Minnesota courts have not decided whether the activity must be lawful under both federal and state law so the MLCPA’s application to medicinal marijuana is still up in the air.

Though the Minnesota Medical Cannabis law does not address this directly, and interpretation under the MLCPA has yet to be litigated, there is a strong presumption of validity to the negative implication drawn from section 153.32 Subd. 3. (c) that prohibits discrimination against a patient enrolled under the registry program, who tested positive for cannabis, unless the patient used, possessed, or was impaired by medical cannabis *on the premises of the place of employment or during hours of employment*. Drawing from the language of the statute, it appears as though all consumption or use of medical marijuana must occur during non-working hours and in such a manner that does not result in impairment at a future time on the job. Further, section 153.32 Subd.1 (a) provides a presumption, that patients enrolled in the registry program, are engaged in the *authorized use* of medical cannabis. Such presumption indicates the validity to authorized off-duty use.

Employers’/Carriers’ Obligations to Reimburse/Pay for Medical Cannabis in Workers’ Compensation

As of July 2015, the Minnesota Department of Labor enacted new rules redefining “illegal substance” to exclude to a patient’s use of medical cannabis permitted by Minnesota law. Since then, it has been a reimbursable form of medical treatment for workers’ compensation claims. However, claims will be reviewed on an individual basis and a qualified medical condition in conjunction with valid enrollment in Minnesota’s medical marijuana program does not necessitate an automatic qualification for worker’s compensation benefits.

MISSISSIPPI



Medicinal CBD Oil Only

Pre-Employment Drug Testing

Mississippi permits an employer to perform pre-employment drug testing. However, an employer who conducts job applicant drug and alcohol testing shall notify the applicant, in writing, upon application and prior to the collection of the specimen for the drug and alcohol test, that the applicant may be tested for the presence of drugs or their metabolites.

Employers' Obligations to Accommodate Medical Use

Mississippi permits medical marijuana usage in only extreme circumstances and the drug remains essentially legally unobtainable. Thus Mississippi law is silent regarding an employer's duty to accommodate medical use.

Employees' Rights Against Discrimination for Off-Duty Use

No protection given to employees for testing positive as a result of off-duty cannabis usage.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Mississippi permits medical marijuana usage in only extreme circumstances and the drug remains essentially legally unobtainable. Thus, Mississippi law is silent on an employer's obligation to pay for such medical use.

MISSOURI



Medical Cannabis Legal

Pre-Employment Drug Testing

There is nothing in Amendment 2 that prohibits the testing of employees for drugs including the testing of employees for marijuana.

Employers' Obligations to Accommodate Medical Use

Section 1.7(7) of the Amendment expressly prohibits the use or consumption of medical marijuana in any public place – including the workplace. However, the issue remains unclear as it relates to off-duty use and will need to be litigated.

Employees' Rights Against Discrimination for Off-Duty Use

Section 1.7(1)(d) provides that Missouri employers are expressly protected from claims of discrimination or wrongful discharge brought by employees as a result of the individual being disciplined or terminated for being “under the influence” of marijuana while at work or while attempting to work. However, employers may still face claims of discrimination. While Amendment 2 has attempted to protect Missouri employers from discrimination claims in the workplace, the Amendment does not define the term “under the influence,” instead, choosing to leave the term ambiguous. There is no guidance or delineation to determine at what point an individual technically falls under the influence of marijuana and how long a person stays under the influence after consuming.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

While Amendment 2 does not address workers' compensation directly, because it requires a medical certification and prescription for individuals to obtain medical marijuana, there is a possibility that Section 287.120.6 will not apply to reduce employees' benefits as a result of their medical marijuana use if such use is pursuant to a prescription. It is unclear if workers compensation will have to reimburse/pay for medical cannabis.

MONTANA



Medical Cannabis Legal

Pre-Employment Drug Testing

Yes, qualified testing program permitted (MCA § 39-2-205, et seq, "Workforce Drug and Alcohol Testing Act)

Employers' Obligations to Accommodate Medical Use

No duty to accommodate.

MCA § 50-46-320

(4)(b): "Nothing in this part may be construed to require . . . an employer to accommodate the use of marijuana by a registered cardholder;"

(5) "Nothing in this part may be construed to: (a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for a debilitating medical condition; or

(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102."

And see: "[A]n employer is not required to accommodate an employee's use of medical marijuana."
Johnson v. Columbia Falls Aluminum Co., LLC, 2009 MT 108N, ¶ 11, 350 Mont. 562, 213 P.3d 789

Employees' Rights Against Discrimination for Off-Duty Use

Cannot discriminate for off-duty, lawful use, with some exceptions.

MCA § 39-2-313

"(2) Except as provided in subsections (3) and (4), an employer may not refuse to employ or license and may not discriminate against an individual with respect to compensation, promotion, or the terms, conditions, or privileges of employment because the individual legally uses a lawful product off the employer's premises during nonworking hours.

(3) Subsection (2) does not apply to:

(a) use of a lawful product, including the use of marijuana for a debilitating medical condition as defined in 50-46-302, that:

(i) affects in any manner an individual's ability to perform job-related employment responsibilities or the safety of other employees; or

MONTANA *continued*



- (ii) conflicts with a bona fide occupational qualification that is reasonably related to the individual's employment;
 - (b) an individual who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products; or
 - (c) an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public.
- (4) An employer does not violate this section if the employer takes action based on the belief that the employer's actions are permissible under an established substance abuse or alcohol program or policy, professional contract, or collective bargaining agreement.”

Employers’/Carriers’ Obligations to Reimburse/Pay for Medical Cannabis in Workers’ Compensation

Administrative Rules of Montana (ARM) 24.29.1526: “Disallowed Procedures: . . . (1) Only reasonable and necessary medical expenses are payable. Procedures that are not generally accepted by the medical community may be determined not to be ‘reasonable’ or ‘necessary.’ Providers are encouraged to seek prior approval from the insurer for experimental or controversial procedures. . . (3) Medical services which are not payable include, but are not limited to, the following: . . . (j) medical marijuana.”

NEBRASKA



Not Legal

Pre-Employment Drug Testing

An employer may fire or take other adverse action against an employee if:

- a. The employee tampers with a drug test sample
- b. The employee refuses to take a drug test, or
- c. The employee tests positive for drugs, and that result is confirmed in a certified clinic, hospital, or laboratory.

Employers' Obligations to Accommodate Medical Use

None.

Employees' Rights Against Discrimination for Off-Duty Use

None.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

None.

NEVADA

Medical and Recreational Cannabis Legal

Pre-Employment Drug Testing

First state to prevent employers from refusing to hire applicants that test positive for marijuana, except for those applying for jobs involving public safety or operation of a motor vehicle (June 5, 2019 signed law to go into effect Jan. 1, 2020) – See Nev. Rev. Stat. § 284-4066 current language (currently allows refusal to hire for rec. marijuana use only).

Employers' Obligations to Accommodate Medical Use

Yes, obligation to accommodate medical use so long as safety of work duties not compromised.

"1. If an employee informs the employee's appointing authority that the employee has consumed any drug which could interfere with the safe and efficient performance of the employee's duties, the appointing authority may require the employee to obtain clearance from the employee's physician before the employee continues to work.

2. If an appointing authority reasonably believes, based upon objective facts, that an employee's ability to perform the employee's duties safely and efficiently:

(a) May be impaired by the consumption of alcohol or other drugs, it may ask the employee whether the employee has consumed any alcohol or other drugs and, if so:

(1) The amount and types of alcohol or other drugs consumed and the time of consumption; . . .

3. If marijuana was consumed, to provide proof that the employee holds a valid registry identification card to engage in the medical use of marijuana pursuant to chapter 453A of NRS." (Nev. Rev. Stat § 284-4064)

Employees' Rights Against Discrimination for Off-Duty Use

Can use while off-duty as long as safety of work duties not compromised (see above).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

No Workers' Compensation reimbursement required.

"The provisions of this chapter do not. . . Require an insurer, organization for managed care or any person or entity who provides coverage for a medical or health care service to pay for or reimburse a person for costs associated with the medical use of marijuana." (Nev. Rev. Stat. 453A.800(1))

NEW HAMPSHIRE



Medical Cannabis Legal

Pre-Employment Drug Testing

Recreational use not legal in New Hampshire. Employer is not restricted in ability to discipline employees for use. (N.H. Rev. Stat. Ann. § 126-X:3)

Employers' Obligations to Accommodate Medical Use

Employee must obtain written consent from the employer, or could be subject to arrest or prosecution. No obligation to accommodate. (N.H. Rev. Stat. Ann. § 126-X:3)

Employees' Rights Against Discrimination for Off-Duty Use

Recreational use not legal in New Hampshire. Employer is not restricted in ability to discipline employees for use. (N.H. Rev. Stat. Ann. § 126-X:3)

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

In *Appeal of Panaggio*, 205 A.3d 1099 (N.H. 2019), the Supreme Court of New Hampshire held that New Hampshire law did not prevent reimbursement for medical marijuana, but remanded the case for further development on whether such reimbursement would violate federal law.

NEW JERSEY



Medical Cannabis Legal

Pre-Employment Drug Testing

Generally, New Jersey employers may conduct drug testing in: (a) Pre-employment testing as a condition of hiring (*Jevic v. Coca-Cola Bottling Co.*, 1990 WL 109851, at *1 (D.N.J. Jun. 06, 1990)); (b) random testing, especially where the employer can show a "specialized need," for example, protecting public safety or compliance in highly regulated industries; or (c) based on reasonable suspicion.

Alternative treatment centers providing medical marijuana must create a workplace drug testing policy for their own employees (N.J.A.C. 8:64-9.6.)

Employers' Obligations to Accommodate Medical Use

Compassionate Use Act (NJSA 24:6I) does not require employers to accommodate medical marijuana in the workplace; however, in *Wild v. Carriage Funeral Holdings, Inc.*, et al., Docket No. A-3072-17T3 (App. Div. March 27, 2019), the NJ Appellate Division reversed dismissal of employee's discrimination claim, remanding for further proceedings.

New Jersey passed legislation in July 2019 (Jake Honig Compassionate Use Medical Cannabis Act or "CUMCA"), which added a provision to NJ law prohibiting adverse employment actions (refusal to hire, fire, or other discrimination) based solely upon the employee's status as a medical cannabis patient. Employees and applicants must be given an opportunity to present a "legitimate medical explanation" following a positive test or have a retest of the original sample before any employer action can be taken.

Employees' Rights Against Discrimination for Off-Duty Use

Generally, private employees may challenge drug testing in employment as a violation of public policy (Hennessey, 609 A.2d at 19-20). New Jersey courts have set a public policy of privacy that may be violated by a suspicionless drug test, if the employer cannot establish a threat to either: (a) Co-workers; (b) The workplace; or (c) The general public.

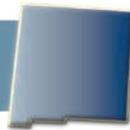
Also, New Jersey's Law Against Discrimination (NJLAD), like the Americans with Disabilities Act of 1990, prohibits discrimination against an employee based on a disability (N.J.S.A. 10:5-5(q)). Alcoholism and drug addiction may be deemed a disability, but only if the individual's addiction does not involve the illegal use of controlled substances (Atty.Gen.F.O. No. 1 (N.J. 1989); *Santiago v. City of Vineland*, 107 F.Supp.2d 512, 550 (D. N.J. 2000)).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

In two decisions, *Watson v. 84 Lumber*, Claim Petition No. 2009-15740, and *McNeary v. Freehold Township*, Claim Petition Nos. 2007-10498, 2008-8094 and 2014-10233, administrative law judges ordered the workers' compensation carriers to reimburse the claimant for medicinal marijuana.

In *Hager v. M&K Construction*, Case No. A-0102-18T3 – NJ Superior Court, the Appellate Division held that the NJ Compassionate Use Medical Marijuana Act was not preempted by the Controlled Substances Act and required reimbursement of medical marijuana.

NEW MEXICO



Medical Cannabis Legal

Pre-Employment Drug Testing

New Mexico has no general statute governing employment and pre-employment drug and alcohol testing for private employers. There are drug and alcohol testing laws, however, for motor carriers (see Motor Carriers). New Mexico's medical cannabis (marijuana) program does not prohibit employers from conducting employment and pre-employment drug testing (see New Mexico Lynn and Erin Compassionate Use Act).

Employers' Obligations to Accommodate Medical Use

In 2019, SB 406 amended the Lynn and Erin Compassionate Use Act to prohibit employers from taking any adverse employment action against an applicant or employee based on conduct allowed under the Act. Exceptions apply if hiring an individual would cause the employer to lose monetary or other licensing-related benefits, if the employee would work in a safety-sensitive position or for use during hours of work.

Previously, in January 2016, a federal district court in New Mexico ruled that neither the New Mexico Lynn and Erin Compassionate Use Act nor the HRA require employers to accommodate medical marijuana use (*Garcia v. Tractor Supply Co.*, 154 F. Supp. 3d 1225 (D.N.M. 2016)).

Employees' Rights Against Discrimination for Off-Duty Use

Participation in the New Mexico Lynn and Erin Compassionate Use Act program does not relieve participants from criminal prosecution or civil penalties for the possession or use of cannabis in the workplace of the qualified patient's or primary caregiver's employment (NMSA 1978, § 26-2B-5(A)(3)(c)).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

In *Vialpando v. Ben's Automotive Services*, 331 P.3d 975 (N.M. Ct. App. 2014), cert denied, 331 P.3d 924 (N.M. 2014) and *Maez v. Riley Industrial*, 347 P.3d 732 (N.M. Ct. App. 2015), state appellate courts held that the Workers' Compensation Act authorized reimbursement for medical marijuana. The New Mexico Court of Appeals in *Lewis v. American General Media*, 355 P.3d 850 (N.M. 2015) agreed with the holding in *Vialpando* and New Mexico is the only state in the country with a fee schedule for medical marijuana reimbursement.

NEW YORK



Medical Cannabis Legal

Pre-Employment Drug Testing

In New York, there is no statute governing pre-employment drug testing or drug and alcohol testing in employment, except for a law that applies to transportation employees (drivers of commercial motor vehicles). For transportation employees, the New York State Department of Transportation's Bus & Passenger Vehicle Regulations (17 New York Codes, Rules and Regulations (NYCRR) §§ 720.0 to 720.32 and 721.0 to 721.6) mirror the requirements of the US Department of Transportation Federal Motor Carrier Safety Administration's drug and alcohol testing regulations (49 C.F.R. §§ 40.1 to 40.413 and 380.101 to 380.609).

In New York City, employers are prohibited from requiring prospective employees from submitting to testing for the presence of THC or marijuana except in safety sensitive positions, which are outlined in the bill (Int. 1445-2019) and the revisions made to New York City Administrative Law § 8-107.

Employers' Obligations to Accommodate Medical Use

Under the New York State Compassionate Care Act, NY Public Health Law Section 3369, certified patients are deemed to have a "disability" under the human rights law and civil rights law. However, employers are not prohibited from having a policy prohibiting an employee from performing his or her employment duties while impaired by a controlled substance.

In *Taxi & Limousine Comm'n v. W.R.*, OATH Index No. 2503/17 (July 14, 2017), the NYC OATH ruled that a taxi driver's license could not be revoked for a positive drug test because he obtained medical marijuana legally.

Employees' Rights Against Discrimination for Off-Duty Use

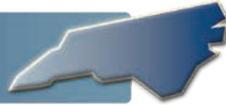
New York does not recognize a private right of action for violations of state drug testing laws because there are no state laws regulating drug testing.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

In *Matter of WDF*, 2017 NY Wrk Comp G1403803, the New York Workers' Compensation Board found that the Board had the authority to direct reimbursement for medical marijuana.

However, employers are not required to take any action that would violate federal law or cause the loss of a federal contract or funding. (N.Y. Pub. Health Law § 3369(2)).

NORTH CAROLINA



Medicinal CBD Oil Only

Pre-Employment Drug Testing

The Controlled Substance Examination Regulation Act (CSERA) governs employment-related drug testing in North Carolina. The CSERA does not require employers to conduct drug tests (N.C.G.S. § 95-233). However, all North Carolina employers who perform employment-related drug testing must follow the procedures in the CSERA (N.C.G.S. § 95-232).

Examinations required by the US Department of Transportation and the US Nuclear Regulatory Commission are specifically exempt from the CSERA (N.C.G.S. § 95-235).

The Controlled Substance Examination Regulation Act (CSERA) does not specify circumstances under which drug testing is authorized or prohibited in North Carolina.

Employers' Obligations to Accommodate Medical Use

None.

Employees' Rights Against Discrimination for Off-Duty Use

The Controlled Substance Examination Regulation Act does not provide for a private right of action.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Not required.

NORTH DAKOTA



Medical Cannabis Legal

Pre-Employment Drug Testing

North Dakota law does not specifically address pre-employment drug testing or regulate drug testing of current employees. Therefore, North Dakota employers may implement a drug testing program at their discretion.

Employers' Obligations to Accommodate Medical Use

None.

Employees' Rights Against Discrimination for Off-Duty Use

There are no North Dakota state laws protecting applicants who test positive for drugs or alcohol. North Dakota does not recognize a private right of action for violations of state drug testing laws because there are no state laws regulating drug testing.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Workers' Compensation reimbursement for medical marijuana prohibited by statute.

OHIO



Medical Cannabis Legal

Pre-Employment Drug Testing

Pre-Employment drug testing is permitted just like any other drug.

Employers' Obligations to Accommodate Medical Use

Under Ohio law, employers don't have to currently hire someone who uses medical marijuana and they don't have to retain an employee that tests positive for medical marijuana.

Employees' Rights Against Discrimination for Off-Duty Use

Employees can't sue their employers for taking action based on medical marijuana use, and employees fired under workplace drug testing or drug-free workplace policies are ineligible for unemployment benefits.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

The law does not require Workers Compensation to pay for medical marijuana. Also key is that an employee whose injury was "the result of being under the influence of marijuana" will not be eligible for Workers Compensation benefits, even if that employee has a prescription for marijuana from a doctor.

OKLAHOMA



Medical Cannabis Legal

Pre-Employment Drug Testing

Workplace Drug and Alcohol Testing Act applies to all employers who have either: (a) One or more employees in Oklahoma; or (b) Offered or may offer employment to one or more individuals in Oklahoma.

The law permits, but does not require or encourage, employers to conduct alcohol or drug testing, including pre-employment after the applicant has received a conditional offer of employment. (Okla. Stat. tit. 40, § 553(A)). Employers that conduct drug testing must have a written policy.

Employers' Obligations to Accommodate Medical Use

Employers should be aware that Oklahoma adopted State Question 788 in 2018 establishing a statutory scheme for medical marijuana (Okla. Stat. tit. 63, §§ 420 to 426). Unless a failure to do so would cause the employer to imminently lose a monetary or licensing related benefit under Federal law or regulation, an employer may not: (a) Discriminate against a person in hiring, terminating, imposing any term or condition of employment, or otherwise penalizing a person based on the person's status as a medical marijuana license holder; or (b) Take action against an employee holder of a medical marijuana license solely based on the employee's: (i) status as a medical marijuana license holder; or (ii) results of a drug test showing positive for marijuana or its components.

Employees' Rights Against Discrimination for Off-Duty Use

(See above).

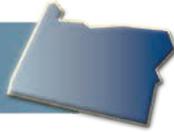
Note: Employers may take action against an employee holder of a medical marijuana license if the holder uses or possesses marijuana while in her place of employment or during the hours of employment. (Okla. Stat. tit. 63, § 425(B)).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

There is no precedent obligating employers to reimburse employees for medical cannabis in workers' compensation cases.

Of note, In *Rose v. Berry Plastics Corp., et al.*, 2019 OK Civ. App. 55 (Ok. Civ. Ct. App. Oct. 16, 2019), the Workers' Compensation commission denied the claimant benefits after he tested positive for marijuana and admitted to smoking marijuana the night before; however, the court overturned this decision, finding that there was no evidence that he was intoxicated at the time of the accident.

OREGON



Medical and Recreational Cannabis Legal

Pre-Employment Drug Testing

In Oregon, there is no law governing pre-employment or employment drug testing. However, all Oregon employers must comply with state alcohol testing laws (Or. Rev. Stat. §§ 659.840 and 659A.300).

Employers' Obligations to Accommodate Medical Use

Employers are not required to accommodate medical marijuana use in the workplace or even if the employee's use only occurs outside of work hours. (Or. Rev. Stat. § 475B.794); *Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus.*, 230 P.3d 518, 524 (Or. 2010)).

Employees' Rights Against Discrimination for Off-Duty Use

The Oregon Supreme Court ruled that an employer did not violate state law by terminating an employee for testing positive for marijuana (*Emerald Steel Fabricators, Inc. v. BOLI*, 230 P.3d 518 (Or. 2010)).

No professional licensing board can impose a civil penalty or take a disciplinary action against a licensed person because of medical marijuana use that is consistent with state law (Or. Rev. Stat. § 475B.919) (this provision is primarily aimed at caregivers).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Insurers are not required to reimburse for medical marijuana.

PENNSYLVANIA

Medical Cannabis Legal

Pre-Employment Drug Testing

Employers are not prohibited or restricted from drug testing, unless it violates other legal provisions.

Employers' Obligations to Accommodate Medical Use

Employers do not have to “make any accommodation of the use of medical marijuana on the property or premises of any place of employment.”

Employers may prohibit patient-employees from performing any task the employer deems life-threatening.

Employers may discipline employees found to be under the influence of medical marijuana in the workplace.

Employees' Rights Against Discrimination for Off-Duty Use

A Pennsylvania county court ruled that the state's Medical Marijuana Act creates a private cause of action for employees who have been terminated for their off-duty use of prescribed medical marijuana.

Palmiter v. Commonwealth Health Systems, et al., No. 19 CV 1315 (Pa. Com. Pl. Lackawana Cnty. Nov. 22, 2019).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

The Medical Marijuana Act contains a provision which expressly denies any insurer requirement to provide coverage for medical marijuana.

RHODE ISLAND



Medical Cannabis Legal

Pre-Employment Drug Testing

Hawkins-Slater Act provides that employers cannot refuse to employ a person for his or her status as a cardholder, and that right may not be denied for the medical use of marijuana (includes failure of pre-employment drug test). (*Callaghan v. Darlington Fabrics Corp.*, No. PC-2014-5680, 2017 R.I. Super. LEXIS 88, at *26 (Super. Ct. May 23, 2017)).

Rhode Island provides that no employer may refuse to employ or otherwise penalize a person solely for his or her status as a medical marijuana cardholder. (R.I. Gen. Laws Ann. § 21-28.6-4).

Employers' Obligations to Accommodate Medical Use

No accommodations required; cannot deny employment for status as cardholder. (*Callaghan v. Darlington Fabrics Corp.*, No. PC-2014-5680, 2017 R.I. Super. LEXIS 88, at *28-29 (Super. Ct. May 23, 2017)).

Nothing in the law "shall be construed to require an employer to accommodate the medical use of marijuana in any workplace." (R.I. Gen. Laws Ann. § 21-28.6-7).

Employees' Rights Against Discrimination for Off-Duty Use

Only rights against discrimination are for use of medical marijuana off-duty (see above).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Not required under statute and there is not currently any case law addressing it.

SOUTH CAROLINA



Medicinal CBD Oil Only

Pre-Employment Drug Testing

Pre-employment drug testing for THC is permitted.

Employers' Obligations to Accommodate Medical Use

Medical use is not lawful, and employees have no obligation to accommodate it.

Employees' Rights Against Discrimination for Off-Duty Use

Medical use is not lawful, and employees have no protection against discrimination under state law.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

There is no obligation. There is no statute or regulation expressly precluding reimbursement (nor any case law on point), but medical cannabis is not legal in South Carolina, so the legality of reimbursement would be questionable regardless of express prohibition.

SOUTH DAKOTA



Not Legal

Pre-Employment Drug Testing

South Dakota law does not address this. Employers are not prohibited nor restricted with requiring drug tests for employees or applicants.

Employers' Obligations to Accommodate Medical Use

None.

Employees' Rights Against Discrimination for Off-Duty Use

None.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

None.

TENNESSEE

Medicinal CBD Oil Only

Pre-Employment Drug Testing

A person or entity that employs a person, is covered by the WC statute, maintains a drug free workplace policy and includes a specific statement of this policy, must after a conditional offer of employment, require job applicants to submit to a drug test and may use a refusal to do so, or a positive drug test, as a basis for refusing to hire a job applicant. Such testing may, but is not required, of an employer, as to alcohol.

Employers must notify all employees where it is a condition of employment to refrain from being under the influence, while in the work place.

Employers' Obligations to Accommodate Medical Use

A private sector employer that dismisses an at-will employee for testing positive on a random drug test, does not violate any mandate of public policy and the dismissed employee has no cause of action for wrongful discharge.

No law found requiring employer to accommodate medical marijuana use.

Employees' Rights Against Discrimination for Off-Duty Use

Often an employee's conduct and use of drugs off the working premises, and outside of the course and scope of his employment, is not considered misconduct connected with work. However, testing positive for such drug use can serve as a basis for discharge of the employee from employment.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

No compensation shall be allowed for an injury or death due to the employee's intoxication or drug use. Where an employer has implemented a drug free work place if the injured employee has at the time of the injury, a BAC equal to, or greater than, eight hundredths of 1% for non-safety positions or four one hundredths of 1% for a safety-position, then it is presumed that the drug or alcohol was the proximate cause of injury but this can be rebutted with clear and convincing evidence that drugs or alcohol are not the proximate cause of injury. If, however, before the accident, the employer had actual knowledge of, and acquiesced in, the employee's presence at the workplace while under the influence, then the employer retains the burden of proof in asserting its defense as to compensation for said employee.

No law found requiring such reimbursement of medical marijuana.

TEXAS



Medicinal CBD Oil Only

Pre-Employment Drug Testing

After notifying employees about their drug policy, private employers in Texas may test employees and applicants: (a) pre-employment; (b) for cause; (c) post-accident; (d) periodically, as part of a regular program or event; (e) on a random basis.

There are other industry-specific, and city/county-specific drug testing regulations.

Employers' Obligations to Accommodate Medical Use

Texas employers are not required to accommodate on-site medical marijuana use, and they may establish drug-free work policies.

Employees' Rights Against Discrimination for Off-Duty Use

None specific to medical marijuana use.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

N/A

UTAH



Medical Cannabis Legal

Pre-Employment Drug Testing

Yes, pursuant to Utah Drug and Alcohol Testing Act, Utah Code 34-38-1, *et seq.*, no restriction on applicant testing in private sector; local government and colleges may test pursuant to a written policy; private employer may hire/fire based on positive test.

However, ADA, Utah Anti-Discrimination Act, Utah MLA provides protection for people with disabilities which includes most conditions qualifying person to use medical marijuana.

Public employers required to treat employees' use of medical cannabis in same way as those using opioids and opiates (i.e. employee may be disciplined for being under the influence while at work); HB 3001 - 26-61a-111- Non-Discrimination for medical care or government employment.

Employers' Obligations to Accommodate Medical Use

No for private employers per HB 3001.

Yes for public employers - required to treat employees in same way as those using opioids and opiates (i.e. employee may be disciplined for being under the influence while at work per Department of Health); HB 3001-26-61a-111 - Non-Discrimination for medical care or government employment.

Employees' Rights Against Discrimination for Off-Duty Use

No for private employers per HB 3001

Yes for public employers - required to treat employees in same way as those using opioids and opiates (i.e. employee may be disciplined for being under the influence while at work per Department of Health); HB 3001-26-61a-111 - Non-Discrimination for medical care or government employment.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

No; HB 3001 – 26-61a-112.

VERMONT



Medical and Recreational Cannabis Legal

Pre-Employment Drug Testing

Employees have no cause of action against an employer who discharges them for violation of their drug policy. (18 V.S.A. § 4230a(e)).

Employers' Obligations to Accommodate Medical Use

No affirmative duty to accommodate use in the workplace. However, employer must engage in interactive process and, where appropriate, accommodate medical marijuana users under state disability discrimination laws - 21 V.S.A. § 495; *Guide to Vermont's Laws on Marijuana in the Workplace*, Vermont Office of the Attorney General, Civil Rights Unit (June 2018)

Employees' Rights Against Discrimination for Off-Duty Use

Employees have no cause of action against an employer who discharges them for violation of their drug policy. (18 V.S.A. § 4230a(e)).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Workers' Compensation coverage is specifically exempt - (18 V.S.A § 4474c(b)).

VIRGINIA



Medicinal CBD Oil Only

Pre-Employment Drug Testing

The Virginia legislature does not regulate pre-employment drug testing for private employers. As such, employers may choose to require pre-employment testing as long as the practice does not conflict with federal laws such as the ADA.

Employers' Obligations to Accommodate Medical Use

Virginia employers are not required to accommodate medical cannabis use under state law. There may be protections under the Virginia Human Rights Act, but there have been no opinions published on this matter.

Employees' Rights Against Discrimination for Off-Duty Use

Virginia has not decriminalized marijuana for any purpose. Instead Virginia provides an affirmative defense for possession of products containing THC-A oil where the individual has (1) a valid, written certification from a Board of Pharmacy-registered physician (or licensed physician assistant and licensed nurse practitioners as of July 1, 2019); (2) a current active patient or caregiver registration issued by the Board of Pharmacy. (Va. Code § 18.2-250.1(C)). Currently this applies only to THC-A oils. The existence of an affirmative defense does not bar arrest or citation.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Unclear, there is no case law available on this subject. Marijuana is still illegal both at the federal and state level in Virginia. As stated previously, the laws only provide an affirmative defense for possession of THC-A oils but do not prevent arrest or citation. Further complicating matters, there is presently no legal source for THC-A oil within the Commonwealth and will not be until late 2019.

WASHINGTON



Medical and Recreational Cannabis Legal

Pre-Employment Drug Testing

The Washington Legislature has not enacted a uniform statute regulating drug testing by private employers (*Roe v. Quality Transp. Servs.*, 838 P.2d 128, 131 (Wash. Ct. App. 1992)). However, there is a statutory provision and common law applicable to employer drug testing under certain circumstances.

Employers' Obligations to Accommodate Medical Use

Employers are not required to accommodate medical marijuana use in the workplace and can establish drug free workplaces (RCW 69.51A.060(4) and 69.51A.060(7); *Roe v. Teletch Customer Care Mgmt. (Colorado) LLC*, 257 P.3d 586 (Wash. 2011)).

Employees' Rights Against Discrimination for Off-Duty Use

Washington employers are not required to accommodate on-site medical marijuana use, and they may establish drug-free work policies. (RCW§ 69.51A.060(4), (7).) Furthermore, the Washington Supreme Court has affirmed an employer's right to terminate an employee because of authorized medical marijuana use outside of the workplace. (*Roe v. Teletch Customer Care Mgmt. (Colorado) LLC*, 257 P.3d 586, 591-92 (Wash. 2011)).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

N/A

WASHINGTON, D.C.



Medical and Recreational Cannabis Legal

Pre-Employment Drug Testing

Employers are prohibited from testing prospective employees for marijuana prior to a conditional offer of employment. (Restriction on Pre-employment marijuana testing. D.C. Code § 32-931).

Employers' Obligations to Accommodate Medical Use

Employers are not required to permit or accommodate use, consumption, or possession of marijuana in the workplace and can enforce policy restricting use of marijuana by employees. (D.C. Code § 48-904.1 (1B, 1C, 1D, 1E)).

To the extent that an employee is using marijuana for medicinal purposes related to qualifying medical conditions, the employer would likely have to accommodate such use (under D.C. law), provided the employee does not violate employer policy related to being under the influence at the workplace, etc.

Employees' Rights Against Discrimination for Off-Duty Use

D.C. permits recreational and medicinal use but employers have a right to enforce their policies if employees are under the influence at the workplace. This is true particularly when an employee performs "any task under the influence of medical marijuana when doing so would constitute negligence or professional malpractice." See D.C. Code § 7-1671.03 (d)(1).

Therefore, D.C. law requires employers to accommodate employees' medicinal use provided it is for a qualifying medical condition, but again, employers are not required to allow or accommodate the results of that use (being under the influence) at the workplace.

Note: In September 2019, Mayor Bowser signed a Mayor's Order providing that District employees will not be disciplined for off-duty cannabis use. Exceptions exist for certain employees such as police officers and those operating heavy machinery, and the off-duty use cannot impair on-the-job safety and performance.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Nothing in this [Medical Marijuana Chapter] shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the use of medical marijuana. (D.C. Code § 7-1671.12.)

WEST VIRGINIA



Medical Cannabis Legal

Pre-Employment Drug Testing

Testing for medical cannabis is permissible as long as the employer adheres to the requirements of the Safer Workplace Act.

The Safer Workplace Act authorizes testing of prospective employees and making the test a condition of hiring (W. Va. Code § 21-3E-4).

Employers' Obligations to Accommodate Medical Use

While employers cannot discriminate based on an employee's certification to use medical cannabis, West Virginia employers are not required to accommodate on-site use and may create drug-free workplace policies.

Employees' Rights Against Discrimination for Off-Duty Use

(See above).

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

N/A

WISCONSIN



Medicinal CBD Oil Only

Pre-Employment Drug Testing

Wisconsin law does not place restrictions on drug testing in the state, and marijuana remains illegal for medical or recreational purposes.

Employers' Obligations to Accommodate Medical Use

As a result, a person can't point to a medical marijuana recommendation from a doctor as a valid excuse for a positive test for marijuana in Wisconsin. A positive test has consequences under your workplace policy, even if the employee has a medical marijuana card.

Employees' Rights Against Discrimination for Off-Duty Use

In Wisconsin, that's a positive result for an illegal drug, and the person could be disciplined under your workplace drug testing policy. The worker might face suspension, employment contingent on completion of a rehabilitation program or termination.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

Employers/carriers have no obligation where medical cannabis remains illegal.

WYOMING

Medicinal CBD Oil Only

Pre-Employment Drug Testing

No statute addressing drug testing for private employers; Wyoming law allows employers to drug test at their discretion.

Employers' Obligations to Accommodate Medical Use

None (all forms of marijuana banned).

Employees' Rights Against Discrimination for Off-Duty Use

Wyoming does not recognize a private right of action for violations of state drug testing laws because there are no state laws regulating drug testing.

Employers'/Carriers' Obligations to Reimburse/Pay for Medical Cannabis in Workers' Compensation

None (all forms of marijuana banned).

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