

GUIDE

RECREATIONAL MARIJUANA: WHAT EMPLOYERS NEED TO KNOW

JULY 2023



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INTRODUCTION

The growth of legalized recreational marijuana across the U.S. continues unabated. And that has created additional compliance issues for employers.

From pre-employment hiring regulations to drug testing rules and laws that protect off-duty use, employers have several items to consider regarding legalized marijuana. Meanwhile, public sentiment has begun to swing toward favoring legalization over the past several years, which likely means more legalization efforts... and compliance concerns moving forward.

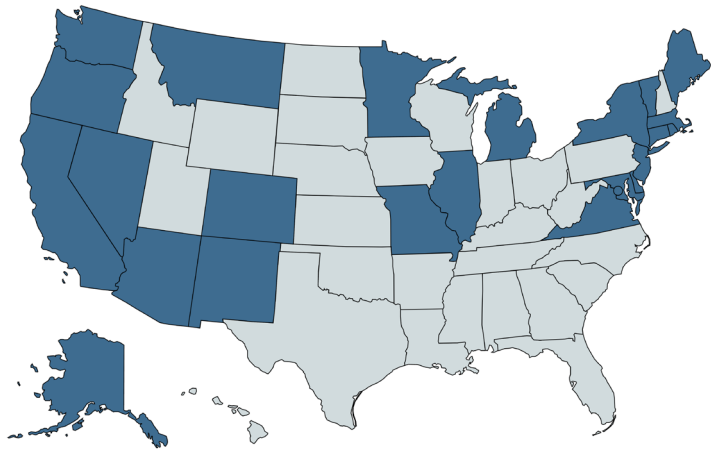
Notes on Using This Guide

This guide focuses on the 23 states, plus Washington, D.C., where recreational marijuana is legal as of July 2023. Also, it does not include information on states where medicinal marijuana is legal.

The items outlined in this guide apply to most situations. Certain industries and jobs, such as those related to safety or health, or fall under federal rules, are often exempt from laws offering protections to marijuana users.

Also, there are protections for employees who work in San Francisco, New York City and Philadelphia.

Employers do have the right to maintain a drug-free workplace, despite its legality in certain states. As always with this topic, it should be noted that marijuana remains illegal at the federal level.



Check out our recent webinar, [In the Weeds: Marijuana and Employment Law Compliance](#), for a more detailed look at the topic.

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MARIJUANA LAWS

State	Pre-Employment Drug Screening	Off-Duty Use Protected	Testing Existing Employees	Additional Notes
Alaska	Allowed	No	Allowed	Alaska does not offer employee protections for recreational use.
Arizona	Allowed	No	Employers cannot fire or refuse to hire an applicant based on a positive drug test alone, though typical exemptions exist, i.e., safety-sensitive roles or employers with federal licenses.	Employers cannot discriminate against workers, as well as job applicants, who have a medical marijuana card.
California	Employers cannot refuse to hire a prospective employee solely for the presence of marijuana in a drug test.	Yes, under a new law passed in the fall of 2022.	Yes, though employers cannot take adverse action against an employee solely for the presence of marijuana in a drug test.	The off-duty protection begins Jan. 1, 2024, and does not apply to employees in certain industries.
Colorado	Allowed	No	Follows federal law when required.	Legislation to protect employees from adverse action because of off-duty use has been introduced in the Colorado Legislature.

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Connecticut	In most cases, an employer may not take adverse action against an employee or potential employee for use of marijuana prior to applying for or working at the job.	Somewhat. Employers cannot discharge or take adverse action against an employee due to legal off-duty marijuana use unless failure to do so would cause employer to violate federal contract or lose federal funding.	Since July 1, 2022, positive drug tests cannot be used as the lone reason for taking adverse action, unless it would violate federal law, the employee is high at work, etc. However, tests can be performed in safety-sensitive jobs.	Employers in certain industries, such as manufacturing and healthcare, are considered exempt from the employment provisions of the law, which also erased certain marijuana-related convictions between Oct. 1, 2015, and Jan. 1, 2020.
Delaware	Allowed	No	Allowed	Delaware in late April 2023 legalized recreational marijuana.
Illinois	The law prohibits employers from refusing to hire, terminate, or discipline individuals who use lawful products during off-duty time.	Yes	Allowed	If an employer finds that a worker is under the influence of marijuana, the employer must allow the employee a reasonable opportunity to contest that determination.

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Maine	Allowed after employee receives drug-testing policy.	Yes	Allowed	Testing is only allowed if a company has a drug testing policy that has been approved by the Maine Department of Labor.
Maryland	Allowed; the ballot measure did not address marijuana in the workplace.	No; the ballot measure did not address marijuana in the workplace.	Allowed; the ballot measure did not address marijuana in the workplace.	Adults 21 and older will be able to purchase recreational marijuana legally beginning July 1, 2023, following a voter-approved ballot referendum.
Massachusetts	Allowed after a job offer has been made.	No	Allowed, but must be job-related and consistent with business necessity.	The state offers little guidance on workplace issues.
Michigan	Allowed	No	Allowed	The law does not require accommodations for recreational use.
Minnesota	Allowed	No	Allowed	Minnesota's law is effective Aug. 1, 2023.
Missouri	Yes, but employers may not discriminate for a positive test from a medical marijuana user.	No	Allowed	Sales of recreational marijuana in Missouri began in February 2023.

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Montana	Allowed	Yes	Allowed, but the state has a restrictive drug-testing statute.	Montana in January 2022 updated its law to include marijuana use as a "lawful activity."
Nevada	<p>It is unlawful for employers in Nevada to refuse to hire someone based on the presence of marijuana in pre-employment drug screenings.</p> <p>It does not apply to:</p> <ul style="list-style-type: none"> • Firefighters • Emergency personnel • Drivers • Safety-sensitive positions 	No – the Nevada Supreme Court ruled that off-duty marijuana use was not a lawfully protected activity in August 2022.	Cannot test within the first 30 days of employment.	Nevada was the first state to pass a law that makes it illegal to not hire an applicant based on the presence of marijuana in a pre-employment drug test.
New Jersey	Employers may not refuse to hire an applicant due to positive marijuana test.	Yes	Allowed if the employer suspects a worker is high on the job, if the employee was involved in an accident or the employer has a reasonable suspicion of use on the job.	The law prohibits employers from discharging workers based on a positive marijuana test unless the employer can show the employee was impaired at work.

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New Mexico	Allowed	No	Allowed	Sales of recreational marijuana in New Mexico began April 1, 2022.
New York	Employers cannot reject applicants based on the presence of marijuana in a pre-employment screening.	Yes	Employers cannot test for recreational marijuana use unless certain situations are involved or as a result of another applicable law, notably federal issues.	There are certain jobs that do allow for pre-employment screenings, including law enforcement, construction workers on public projects, jobs requiring a commercial license, jobs involving the care of vulnerable people and those that impact health or safety of the public.
Oregon	Allowed if the employer has a reasonable suspicion the applicant may be under the influence of a controlled substance.	No	Allowed	A proposed bill would allow employees to use marijuana while not on the job, but would allow employers to use a drug screening test to ensure that no use is occurring while on duty.

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Rhode Island	Generally, employers can't take adverse action against an applicant for a positive marijuana test.	Yes, unless it conflicts with federal law, is barred under a collective bargaining agreement or the employee's job involves work that is "hazardous, dangerous or essential to public welfare and safety."	Employers cannot take adverse action against an employee for a positive marijuana test in most instances.	The law does not require a showing of on-the-job impairment, includes automatic expungement of some prior civil or criminal marijuana possession charges and allows employers to ban use in the 24-hour period before a scheduled shift for safety-sensitive jobs.
Vermont	Testing allowed with advance written notice to applicant, after offer of employment has been made, and if test is part of pre-employment physical.	No	Allowed	Legalization of marijuana use and possession began July 1, 2021. The date was moved up from 2024, when sales will be legal.

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Virginia	Allowed	No	Once an employee is hired, Virginia law generally prohibits employers from requesting or requiring that an employee submit to a drug test as an expressed or implied condition of employment.	Employers are prohibited from requiring applicants to disclose information regarding an arrest, criminal charge, or conviction for simple marijuana possession during the hiring process, including disclosures on any application for hire.
Washington	Employers are prohibited from discrimination in hiring due to an applicant's lawful off-duty use of marijuana.	No, with the hiring exception.	Allowed	Exceptions for federal contracts, those receiving federal funding or licensing, safety-sensitive positions.
Washington, D.C.	Employers cannot refuse to hire or take adverse action against an employee for using recreational marijuana or participating in a medical marijuana program or failing to pass a drug test for marijuana (exceptions apply).	Yes, so long as there is no indication of on-site impairment.	Allowed	New employment protections were signed into law in July 2023, though they generally do not apply to jobs in safety-sensitive fields.

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CONCLUSION

The expanded legalization of marijuana gives employers a number of items to consider. Depending on the job market, industry type and more, employers may want to examine their policies and procedures, especially as it relates to hiring and drug testing.

With decriminalization of recreational marijuana becoming more accepted, even at the federal level, the complexities of handling these myriad laws will likely become more challenging in the future.

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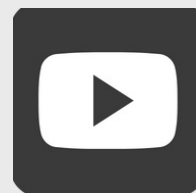
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