

Cannabis & State Employment Laws



January 15, 2020

Marijuana use is still illegal under federal law, but now legal in some form in most states. This conundrum is creating legal employment compliance challenges for restaurants, particularly for those with operations in multiple states. Many states that have legalized some form of marijuana use still include employer-friendly language allowing employers to decide whether or not to accommodate marijuana use or to prohibit its use by its employees altogether—including for medical reasons. However, in some states, there are laws that contain language prohibiting employment discrimination because of medical marijuana use.

Thus, the Restaurant Law Center commissioned the preparation of this document from the law firm of Baker & Hostetler LLP to provide restaurants and other food service establishments with a brief overview of the 33 states, and the District of Columbia, that have legalized either medical or recreational marijuana use with an outline of the employer obligations or exemptions in each jurisdiction, as of January 1, 2020, for compliance purposes. This document is not a substitute for experienced legal counsel and does not provide legal advice, nor does it attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. The document covers some major recent developments, but it is not all-inclusive and the current status of any law should be verified by counsel. Employers should also consult employment counsel to determine whether and how their particular situations are affected by these laws.

State	Medical Marijuana?	Recreational Marijuana?	Employer's Obligations or Exemptions
ALASKA 	YES	YES	Employers are not required to accommodate medical marijuana use in any place of employment Alaska Stat. § 17.37.040(d)(1)).
ARIZONA 	YES	NO	Employers cannot make employment decisions based on medical marijuana use, unless the use of marijuana would cause the employer to lose licensing benefits under federal law, or lose money. Employers ARE allowed to discipline employees for being impaired by medical marijuana while at work. Ariz. Rev. Stat. §§36-2801 to 36-2819
ARKANSAS 	YES	NO	Employers cannot refuse to hire medical marijuana users or medical marijuana caregivers based on their status in the application process. Employers are permitted to prevent employees from conducting safety-sensitive work while under the influence of medical marijuana. Employers CANNOT discipline employees for possession of 2.5 ounces or less of marijuana at work. Ark. Const. amend. XCVIII, §§ 3, 6
CALIFORNIA 	YES	YES	Employers can fire employees for marijuana use at work or for testing positive for marijuana, regardless of whether the employee uses marijuana recreationally or medically. Cal. Health & Safety Code §§ 11362.5, 11362.7 to 11362.9; Cal. Health & Safety Code §§ 11362.1 to 11362.45; <i>Ross v. RagingWire Telecommunications, Inc.</i> , 42 Cal.4th 920 (2008)





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COLORADO 	YES	YES	<p>Employers can fire employees for marijuana use at work or testing positive for marijuana, regardless of whether the employee uses marijuana recreationally or medically.</p> <p>Colo. Const. art. XVIII, §§ 14, 16</p>
CONNECTICUT 	YES	NO	<p>Employers cannot hire or fire individuals for being medical marijuana users or being primary caregivers for medical marijuana users.</p> <p>Employers can prohibit employees from using marijuana while at work and discipline employees if they do.</p> <p>Conn. Gen. Stat. §§ 21a-408 to 21a-408v <i>Noffsinger v. SSC Niantic Operating Co., LLC</i> 338 F. Supp. 3d 78</p>
DELAWARE 	YES	NO	<p>Employers cannot hire or fire individuals based on their medical marijuana use, unless the use of marijuana would cause the employer to lose licensing benefits or money under federal law.</p> <p>Employers ARE allowed to discipline employees for being impaired by medical marijuana or using medical marijuana while at work.</p> <p>Del. Code tit. 16, §§ 4901A to 4928 <i>Chance v. Kraft Heinz Foods Co., C.A. No. K18C-01-056 NEP</i> (Del. Super. Ct. Dec. 17, 2018)</p>
WASHINGTON DC 	YES	YES	<p>Washington D.C.'s medical marijuana statute does not address employment law. The recreational marijuana statute does not require employers to allow employees to use marijuana in the work place or to carry marijuana in the work place.</p> <p>Employers are permitted to restrict their employees' use of recreational marijuana.</p> <p>D.C. Code Ann. §§ 7-1671.01 to 7-1671.13; 48-904.01</p>
FLORIDA 	YES	NO	<p>Florida employers do not have to accommodate an employee's medical marijuana usage and can prohibit an employee from working while under the influence of medical marijuana.</p> <p>Fla. Stat. § 381.986</p>
HAWAII 	YES	NO	<p>Hawaii's medical marijuana statute does not address employers' rights. Therefore, employers are free to fire and discipline employees for marijuana use because marijuana is still illegal under federal law.</p> <p>Haw. Rev. Stat. §§ 329-121 to 329-131</p>

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ILLINOIS 	YES	YES	<u>Medical Marijuana</u> <ul style="list-style-type: none"> Employers cannot discriminate against medical marijuana users, unless the use of marijuana would cause the employer to lose licensing benefits or money under federal law. Employers can discipline employees for using or possessing medical marijuana on work premises. Employers can discipline employees where the employer has a good faith belief the employee was under the influence of medical marijuana at work. However, the employer must give the employee a chance to defend his or her self. <u>Recreational Marijuana (January 2020)</u> <ul style="list-style-type: none"> Employers can have drug-free policies and fire employees for testing positive for marijuana. <p>410 Ill. Comp. Stat. Ann. §§ 130/30 to 130/50</p>
LOUISIANA 	YES	NO	<p>Louisiana's medical marijuana statute does not address employers' rights. Therefore, employers are free to fire and discipline employees for marijuana use because marijuana is still illegal under federal law.</p> <p>La. Rev. Stat. 40:1046</p>
MAINE 	YES	YES	<u>Medical Marijuana</u> <ul style="list-style-type: none"> Employers cannot hire or fire individuals based on their status as medical marijuana users or caregivers to medical marijuana users, unless allowing such conduct would cause the employer to lose licensing benefits or money under federal law. Employers do not have to allow employees to use or be under the influence of medical marijuana while at work. <u>Recreational Marijuana</u> <ul style="list-style-type: none"> Employers cannot make hiring or firing decisions based on off-site recreational marijuana use. <p>Me. Rev. Stat. tit. 22, §§ 2421 to 2430-B; Me. Rev. Stat. tit. 7, §§ 2441 to 2455</p>
MARYLAND 	YES	NO	<p>Maryland law does not prevent an employer from testing for use of cannabis (for any reason) or taking action against an employee who tests positive for use of cannabis (for any reason).</p> <p>Md. Code §§ 13-3301 to 13-3316.</p>

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MASSACHUSETTS 	YES	YES	<p><u>Medical Marijuana</u></p> <ul style="list-style-type: none"> Generally, employers are not required to accommodate the use of medical marijuana at work. Employers do have to reasonably accommodate off-site and off-duty medical marijuana use if the employee uses medical marijuana for a disability. The employer will not be obligated to make such accommodation if there is an easier alternative or if doing so would unduly burden the employer. <p><u>Recreational Marijuana</u></p> <ul style="list-style-type: none"> Employers do not have to accommodate employee use of marijuana in the workplace and may restrict employee use of marijuana. <p>Mass. Gen. Laws Ch. 94I §§ 1 to 8; 105 Mass. Code Regs. 725.650; Mass. Gen. Laws Ann. ch. 94G, § 2; <i>Barbuto v. Advantage Sales and Marketing, LLC</i>, 477 Mass. 456 (2017).</p>
MICHIGAN 	YES	YES	<p>For medical or recreational use, employers do not have to accommodate marijuana use and can refuse to hire individuals who test positive for marijuana. Employers can fire employees for testing positive for marijuana even if the employee has a valid medical marijuana card and the use was off-site and off-duty.</p> <p>Mich. Comp. Law §§ 333.26421 to 333.26430, 333.26424, 333.26427; § 333.27954</p> <p><i>Casias v. Wal-Mart Stores, Inc.</i>, 695 F.3d 428 (2012).</p>
MINNESOTA 	YES	NO	<p>Employers make hiring or firing decisions based on medical marijuana use, unless the use of marijuana would cause the employer to lose licensing benefits or money under federal law. Minn. Stat. Ann. §§ 152.21 to 152.37</p>
MISSOURI 	YES	NO	<p>Missourians do not have causes of action against current or future employers where the employer:</p> <ul style="list-style-type: none"> prevents the employee from using marijuana or disciplines the employee for using marijuana. <p>Mo. Const. art. XIV, §1-7(1)(d)</p>
MONTANA 	YES	NO	<p>Employers do not have to accommodate the use of medical marijuana in the work place.</p> <p>Mont. Code §§ 50-46-301 to 50-46-345</p> <p><i>Carlson v. Charter Communications</i>, No. 17-35917 (9th Cir. Nov. 19, 2018).</p>

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NEVADA 	YES	YES	<p><u>Medical Marijuana</u></p> <p>Employers are not required to allow employees to use medical marijuana on-site but must reasonably accommodate medical marijuana use unless it would prevent employees from doing their job, cause unnecessary hardship on the employer, or cause safety concerns.</p> <p><u>Recreational Marijuana</u></p> <p>Employers can prohibit employees from using recreational marijuana. Nev. Rev. Stat. §§ 453A.800, 453D.100</p> <p><u>Note:</u> Nevada recently amended its Employment Practices statute to prevent employers from refusing to hire based on a positive drug test for marijuana. Nev. Rev. Stat. § 613</p>
NEW HAMPSHIRE 	YES	NO	<p>Employers do not have to allow employees to use medical marijuana at work. Employers can discipline or fire employees for using medical marijuana while at work or for being under the influence of medical marijuana while at work. N.H. Rev. Stat. Ann. §§ 126-X:1 to 126-X:11</p>
NEW JERSEY 	YES	NO	<p>Employers are allowed to prohibit marijuana use during work hours and can discipline employees for using or possessing cannabis at work. Employers do not have to accommodate medical marijuana users in such a way that would cause the employer to violate federal law. N.J.S. 24:61-2; <i>Wild v. Carriage Funeral Holdings, Inc.</i>, Docket No. A-3072-17T3 (N.J. App. Div. March 27, 2019)</p>
NEW MEXICO 	YES	NO	<p>Employers are expressly permitted to fire employees for using medical marijuana. N.M. Stat. §§ 26-2B-1 to 26-2B-7; <i>Garcia v. Tractor Supply Company</i>, 154 F. Supp.3d 1225 (2016).</p>
NEW YORK 	YES	NO	<p>Employers cannot hire or fire an employee or an applicant for using medical marijuana. Employers are permitted to prohibit an employee being under the influence of medical marijuana while at work. Businesses with four or more employees must reasonably accommodate employees that use medical marijuana, but are not required to accommodate medical marijuana users in a way that would violate federal law. N.Y. Pub. Health Law §§ 3360 to 3369-E; N.Y. Comp. Codes R. & Regs. Tit. 10, § 1004.18</p> <p><u>Note:</u> New York City recently banned drug testing 8 RCNY 8-102</p>

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NORTH DAKOTA 	YES	NO	Employers can discipline employees for using or possessing marijuana while at work. Employers are free to base hiring decisions on medical marijuana use because state law does not address employment protections. N.D. Cent. Code §§ 19-24.1-01 to 19-24.1-40
OHIO 	YES	NO	Employers can prohibit medical marijuana use at work and are not required to accommodate medical marijuana use. Employers can refuse to hire on the basis of medical marijuana usage and fire employees who use medical marijuana. Ohio Rev. Code §§ 3796.01 to 3796.30
OKLAHOMA 	YES	NO	Employers cannot make hiring or firing decisions based on a potential or current employee's testing positive for marijuana or status as a medical marijuana card holder. Employers are permitted to hire or fire based on marijuana use if the marijuana use would cause the company to lose federal benefits. Employers CAN prohibit the use or possession of marijuana on work premises. Okla. Stat. tit. 63, § 420. As of August 29th, 2019, employers can fire or refuse to hire safety-sensitive position holders for using marijuana. Okla. Stat. tit. 63, § 427.2
OREGON 	YES	YES	<u>Medical Marijuana</u> <ul style="list-style-type: none"> Employers do not have to accommodate employees who use medical marijuana. Employees may be fired for their use of medical marijuana, even if the employee uses the marijuana off-site and outside work hours. <u>Recreational Marijuana</u> <ul style="list-style-type: none"> There are no restrictions on an employer's ability to fire employees for using marijuana or limiting an employee's marijuana use. Or. Rev. Stat. Ann. §§ 475B.413, 475B.020; <i>Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries</i> , 230 P.3d 518 (2010)
PENNSYLVANIA 	YES	NO	Employers cannot fire or refuse to hire individuals based on their use of medical marijuana. Employers can fire employees for being under the influence of medical marijuana at work if the usage causes the employee's performance to fall below the requisite standard of performance for the job. 35 Pa. Stat. §§ 10231.510, 10231.1309, 10231.2103


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RHODE ISLAND 	YES	NO	<p>Employers do not have to accommodate employees for medical marijuana use in the workplace.</p> <p>Employers cannot fire or refuse to hire based on medical marijuana card holder status or testing positive for marijuana.</p> <p>R.I. Gen. Laws §§ 21-28.6-4, 21-28.6-7; <i>Callaghan v. Darlington Fabrics Corp.</i>, No. PC-2014-5680 (R.I. Super. 2017)</p>
UTAH 	YES	NO	<p>Utah's medical marijuana statute does not address employers' rights. Therefore, employers are free to fire and discipline employees for marijuana use because marijuana is still illegal under federal law.</p>
VERMONT 	YES	YES	<p><u>Medical Marijuana</u></p> <p>Vermont's medical marijuana statute does not address employers' rights. Therefore, employers are free to fire and discipline employees for marijuana use because marijuana is still illegal under federal law.</p> <p><u>Recreational Marijuana</u></p> <p>Employers are not mandated to accommodate marijuana use in the work place.</p> <p>Employers can prohibit using and possessing marijuana while at work.</p> <p>Vt. Stat. Ann. tit. 18, §§ 4230a, 4471 to 4474m</p>
WASHINGTON 	YES	YES	<p><u>Medical Marijuana</u></p> <p>Employers may refuse to hire medical marijuana users if the user tests positive for marijuana during the hiring process.</p> <p>Employers may fire medical marijuana card holders for off-duty medical marijuana use.</p> <p><u>Recreational Marijuana</u></p> <p>Washington's statute does not address employment in the context of recreational marijuana.</p> <p>Wash. Rev. Code § 69.51A.060; § 69.50.4013; <i>Roe v. TeleTech Customer Care Mgt. (Colorado) LLC</i>, 257 P.3d 586 (Wash. 2011)</p>

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WEST VIRGINIA 	YES	NO	<p>Employers cannot discriminate against employees who use medical marijuana.</p> <p>Employers can take disciplinary action against employees who fall below their requisite work standard due to medical marijuana use.</p> <p>Employers can prohibit employees from doing work that would pose a safety risk if conducted while under the influence of marijuana.</p> <p>Employers do not have to accommodate medical marijuana use in such a way that would cause the employer to violate federal law. W. Va. Code §§ 16A-5-10, 16A-15-4</p>

For direct and confidential legal advice, we recommend you contact our Law Firm Partner below.

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