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Earning The Legal Weed Gold Star: Dealing With Marijuana In The Workplace

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Epstein Becker Green

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Goal for Today – Jam Through The Following

1. Have A Fun Little Contest of Name That Tune
2. Provide an historical overview of the legal landscape of cannabis law across the United States
3. Help spot issues related to cannabis in the workplace
4. Open minds about cannabis in the workplace

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Marijuana Landscape

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Historical Background – Early 20th Century

- **Before 1910:** The government encouraged the production of hemp for ropes, sails, and clothing. In the late nineteenth century, marijuana became a popular ingredient in many medicinal products and was sold openly in public pharmacies.
- **1910:** the Mexican Revolution led to a wave of Mexican immigration to states throughout the American Southwest. The prejudices and fears that greeted these peasant immigrants also extended to their traditional means of intoxication: smoking marijuana.
  - Police officers in Texas claimed that marijuana incited violent crimes, aroused a 'lust for blood' and gave its users 'superhuman strength.'
  - Rumors spread that Mexicans were distributing this 'killer weed' to unsuspecting American schoolchildren. Sailors and West Indian immigrants brought the practice of smoking marijuana to port cities along the Gulf of Mexico.
  - Massive unemployment and social unrest during the Great Depression stoked resentment of Mexican immigrants and public fear of the "evil weed." As a result—and consistent with the Prohibition era's view of all intoxicants—29 states had outlawed cannabis by 1931.

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Historical Background – 1930s

- **1936:** The propaganda film "Reefer Madness" is released and fuels parental concern over marijuana use. The film spreads fear that the youth of America faced devious marijuana dealers who would corrupt them and lead to things like crime and sex. The film ends with the warning: "The dread marijuana may be reaching forth next for your son or daughter...or yours...or YOURS!"

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Historical Background – 1930s

- **1937:** The Marijuana Tax Act of 1937 is enacted as the first federal U.S. law to criminalize marijuana nationwide. The Act imposed an excise tax on the sale, possession or transfer of all hemp products, effectively criminalizing all but industrial uses of the plant. 58-year old farmer Samuel Caldwell was the first person prosecuted under the Act. He was arrested for selling marijuana on October 2, 1937, just one day after the Act's passage and sentenced to four years of hard labor.

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Historical Background – The 60s

- **1960s:** In the late sixties, marijuana becomes a part of the growing counterculture and "hippie" lifestyle.

- **1969:** the U.S. Supreme Court decision of *Timothy Leary v. United States* held the Marijuana Tax Act was unconstitutional.

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Historical Background – 1970s and the beginning of the "War On Drugs"

- **Oct. 27, 1970:** Richard Nixon signs the Controlled Substances Act of 1970 into law which repealed the Marijuana Tax Act. The CSA classified marijuana as a Schedule I drug—along with heroin, LSD and ecstasy—with no medical uses and a high potential for abuse. The CSA is still in effect today and marijuana remains a Schedule I drug.
- **1971:** Nixon uses military intervention to combat the importation of drugs in countries like Colombia and Mexico through his "war on drugs." Nixon famously stated that "America's public enemy number one in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive."
- **1972:** The National Commission on Marijuana and Drug Abuse releases a report titled "Marijuana: A Signal of Misunderstanding." The report recommended "partial prohibition" and lower penalties for possession of small amounts of marijuana. The government ignores the report's findings.
- **1973:** The Bureau of Narcotics and Dangerous Drugs, the Office for Drug Abuse Law Enforcement and the Office of National Narcotics Intelligence are merged into the Drug Enforcement Administration.

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Historical Background – 1980s – Continuation of the War On Drugs

- **1986:** President Reagan signs the Anti-Drug Abuse Act, reinstating mandatory minimums and raising federal penalties for possession and distribution.

- **1988:** Drug-Free Workplace Act of 1988 is enacted and requires certain federal contractors and all federal grantees to agree that they will provide drug-free workplaces as a precondition of receiving a contract or grant from a federal agency.

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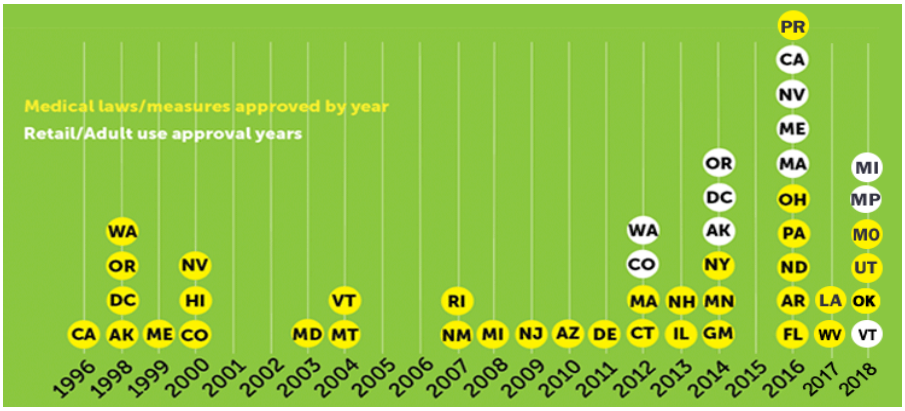
Historical Background – 1990s – The Worm Starts To Turn

- **1996:** California enacts the Compassionate Use Act of 1996 and becomes **the first state to legalize marijuana for medicinal use by people with severe or chronic illnesses.**



(Source: National Conference of State Legislatures)

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Federal Fuel for Firing Up

Former Attorney General Jeff Sessions rescinded the Cole Memo in 2018, and told prosecutors to use established prosecutorial principles and their own judgment when prosecuting – or declining to pursue – marijuana charges.

In 2013, the Justice Department issued perhaps the most influential memo on federal marijuana enforcement. Known as the Cole Memorandum, the Justice Department said it would not challenge states' legalization laws at that time and expected states to have robust enforcement efforts of their own.

The Justice Department has in general declined to pursue cases where individuals are acting in compliance with state law, and it has also not challenged state legalization laws in court.

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More Fuel for the Fire

- A growing majority of Americans believe that recreational marijuana should be legal. A Gallup poll conducted in October 2018 found that 66 percent of U.S. adults think the drug should be legal. Pew Research Center and the General Social Survey conducted by NORC at the University of Chicago found similar levels of support for marijuana legalization.
- Americans have warmed significantly to the idea in recent years. Just 12 percent of U.S. adults supported legalization in 1969, according to Gallup – a figure that rose to 31 percent in 2000 before accelerating upward rapidly, climbing above 50 percent in 2013.
- Democrats are more likely to support legalization, though a majority of Republicans were in favor of it in 2018, the Gallup poll found. Young people are similarly more likely to back marijuana legalization – levels of support reached nearly 80 percent in 2018 – but approval among those aged 55 and older rose above 50 percent last year.

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The Marijuana Movement – Where Are We Now?

33 states and D.C. have medical marijuana laws

11 states have legalized recreational use:

AK, CA, CO, IL, ME, MA, MI, NV, OR, VT, WA and D.C.

Only four states have nothing:

ID, ND, NE, KS

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Dealing With Weed in the Workplace

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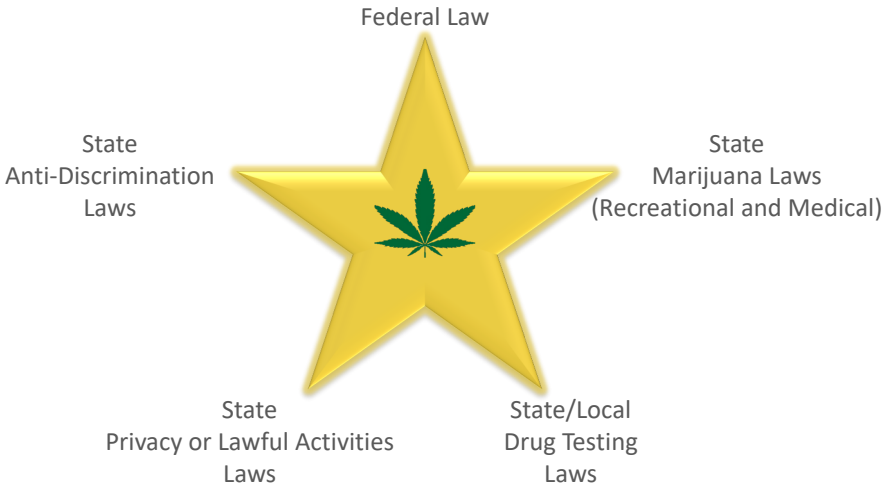
Let's Get To The Point – 5 Points To Remember



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Fact Pattern: Pre-employment Drug Test

1. You interviewed **Mary Jane** for an entry-level customer service representative position. You like Mary Jane and extend her an offer. The offer is contingent on her passing a background check and a drug test.
2. Mary Jane accepts the offer but says that she will test positive for marijuana because she has Crohn's disease and her doctor has prescribed marijuana to alleviate her symptoms. She tells you that does not use marijuana daily, has never consumed it at work, would never consume it at work and would never bring it to work.
3. Mary Jane submits urine sample on August 1. Starts working on August 5. The next day, drug test comes back positive for marijuana.
4. How would an employer in different states deal with this situation?

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Colorado

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Colorado

- Medical marijuana has been legal in Colorado since 2000.
- Marijuana for recreational use has been legal in Colorado since 2012.
- Colorado has a "lawful activities statute" that provides that "[i]t shall be a discriminatory or unfair employment practice for an employer to terminate the employment of any employee due to that employee's engaging in any **lawful activity** off the premises during nonworking hours."
- Colorado has an anti-discrimination law that covers disability.

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What Does "Lawful" Mean?

- Does lawful mean lawful under Colorado state law only?
- If that's the case, it would be an unfair employment practice under Colorado law to terminate an employee who uses marijuana off premises during nonworking hours.
- Or does lawful mean lawful under both state and federal law?
  - Controlled Substances Act
- The Colorado statute does not define "lawful."

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What Happens To Mary Jane In Colorado?

- Colorado Supreme Court declined "to engraft a state law limitation onto the statutory language."
  - *Coats v. Dish Network,* LLC, 2015 CO 44, 350 P.3d 849 (2015).
  - Coats had been working for Dish Network for three years without a problem.
- "Lawful" in the Colorado statute means lawful under **both** state and federal law.
- The Controlled Substances Act controls. Marijuana is a Schedule I substance, meaning federal law designates it as having no accepted medical use and makes use, possession, or manufacture of marijuana a federal criminal offense. There is no exception for marijuana use for medicinal purposes.
- Cites to *Gonzales v. Raich*, 545 U.S. 1 (2005) that the Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law should prevail, including in the area of marijuana regulation.
- **Conclusion**: Last dance for Mary Jane (Fired)

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California

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California: Consideration Points

- **Proposition 215** (a/k/a Compassionate Use Act of 1996)
- Legalized medicinal marijuana in California.

- **Proposition 64**
- Legalized recreational marijuana use starting Jan. 1, 2018
- Prop 64 specifically allows public and private employers to enact and enforce workplace policies pertaining to marijuana

- **California Fair Employment and Housing Act**
- California forbids discrimination on the basis of disability or handicap.

- **Constitutional Right to Privacy in California**
- No Right to Privacy in the Workplace law or "Lawful Activities" law.

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Can Mary Jane Dance in California?

- *Ross v. Ragingwire Telecommunications, Inc.*, CA Supreme Court 2008
- California's Compassionate Use Act does not give marijuana the same status as any legal prescription drug.
  - That law simply exempted medical users and their primary caregivers from criminal liability.
  - Nothing in the Act addresses rights and obligations of employers and employees.
- The California Fair Employment and Housing Act does not require employers to accommodate the use of illegal drugs.
- Prop 64 specifically allows public and private employers to enact and enforce workplace policies pertaining to marijuana
- Termination did not violate any California public policy or right to privacy.
- **Conclusion:** No Dance for Mary Jane (Fired)

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Massachusetts

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Barbuto Paves The Way for Mary Jane to Dance in Massachusetts

- *Barbuto v. Advantage Sales and Marketing, LLC*, Supreme Judicial Court of Massachusetts, July 17, 2017
  - *Barbuto* files a charge of discrimination with the Massachusetts Commission Against Discrimination, then a lawsuit asserting the following claims:
    - Handicap discrimination in violation of Massachusetts Law Against Discrimination against both the company and the HR Manager
    - Interference with her right to be protected from handicap discrimination under state law against the HR Manager only
    - Aiding and abetting in committing handicap discrimination in violation of state law against the HR Manager only
    - Invasion of privacy against both the company and the HR Manager
    - Denial of the "right or privilege" to use marijuana lawfully as a registered patient to treat a debilitating medical condition in violation of the Massachusetts marijuana act against both the company and the HR Manager
    - Violation of public policy by terminating her for lawfully using marijuana for medicinal purpose against both the company and the HR Manager

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What Happens To Mary Jane in Massachusetts?

- Trial court dismissed all claims except for invasion of privacy claim. Plaintiff requested court enter final judgment on dismissed claims and stay the invasion of privacy claim pending appeal. Supreme Judicial Court accepted the application for direct appellate review.
- Supreme Judicial Court holds that there are no implied private rights of action under the Massachusetts medical marijuana act.
- Supreme Court reverses dismissal of claims under the Massachusetts handicap discrimination law, including the individual counts against the HR Manager (aiding and abetting and interference)
  - **Company had the duty to engage in the interactive process on reasonable accommodation**
  - Company has burden of proving undue burden of a requested accommodation, which is an issue that may be resolved at summary judgment or at trial, not on a motion to dismiss
- **Conclusion**: Mary Jane Dances

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Key Takeaways: Must Engage In Interactive Process in MA

- Rejects argument that *Barbuto* not a "qualified handicapped person" because the only accommodation she sought – continued use of medical marijuana – is a federal crime and, therefore, facially unreasonable.
- If the employer had a drug policy prohibiting the use of a medication like medical marijuana, it still has a duty to engage in the interactive process with the employee to determine whether there were equally effective medical alternatives to the prescribed medication whose use would not be in violation of the policy.
- Where no equally effective alternative exists, the employer bears the burden of proving that the employee's use of the medication would cause an undue hardship to the employer's business in order to justify the employer's refusal to **make an exception to the drug policy** to reasonably accommodate the medical needs of the handicapped employees.

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Key Takeaways: Exceptions To Drug Policy Must Be Considered

- The Massachusetts law provides that patients shall not be denied "any right or privilege" on the basis of their medical marijuana use.
- A handicapped employee has the "right or privilege" to reasonable accommodation under the Massachusetts law against handicap discrimination.
- Court holds that an "**exception to an employer's drug policy to permit its use is a facially reasonable accommodation."**
- Fact that employee's possession of medical marijuana is a violation of federal law does not make it per se unreasonable as an accommodation. The only person at risk of federal criminal prosecution for possession of medical marijuana is the employee. An employer would not be in joint possession of medical marijuana or aid and abet its possession simply by permitting an employee to continue off-site use.
  - Compare *Ross v. RagingWire Telecommuncations*, California Supreme Court (2008) (don't have to make an exception)

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Key Takeaways: Undue Hardship in Massachusetts

- Employer in Massachusetts can escape liability if it can prove that accommodating medical marijuana use would pose an undue burden
  - Prove that continued use of medical marijuana would impair the employee's performance of her job or pose an unacceptably significant safety risk to the public, the employee or her fellow employees.
  - Prove that would violate an employer's contractual or statutory obligation, and thereby jeopardize its ability to perform its business
    - USDOT transportation regulations that prohibit employees in safety-sensitive positions from using marijuana
    - Federal government contractors and recipients of federal grants are required to maintain a drug free workplace under the Drug Free Workplace Act

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Key Takeaways: No Respect for the Feds – i.e., No Preemption in MA

- Implicitly rejects a preemption argument.
  - Notes that since 1970, when the Controlled Substances Act declared that marijuana "has no currently accepted medical use in treatment in the United States," nearly 90% of the States have enacted laws regarding medical marijuana that reflect their determination that marijuana, where lawfully prescribed by a physician, has a currently accepted medical use in treatment."
- To declare an accommodation to be per se unreasonable "out of respect for federal law would not be respectful of the recognition of Massachusetts voters, shared by the legislatures or voters in the vast majority of states, that marijuana has an accepted medical use for some patients suffering from debilitating medical conditions."
- Check out John Oliver episode from April 2, 2017 – shreds the feds for being so far behind.

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Illinois

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Illinois: Consideration Points

- **Illinois Cannabis Regulation and Tax Act** (eff. Jan. 1, 2020)
- Employer express protections (Sec 10-50), including:

  "Nothing in this Act shall prohibit an employer from adopting reasonable zero tolerance or drug free workplace policies."

- IL Cannabis Act also provides that "Nothing in this Act shall be construed to enhance or diminish protections afforded by any other law …"

- **Illinois Compassionate Use of Medical Cannabis Pilot Program Act** (eff. Aug. 1, 2013)
- Employee's status as a registered qualifying patient is protected. (410 ILCS 130/25)
- Employer cannot discriminate against a qualifying patient based on employee's **status** as a registered qualifying patient. (410 ILCS 130/40)
- Employer express protections, 410 ILCS 130/50, include:
  - Nothing shall prohibit an employer from enforcing a policy concerning drug testing, zero-tolerance, or drug free workplace.
  - Nothing shall be construed to interfere with any federal restrictions on employment.

- **Illinois Human Rights Act**
- Prohibits employment practices that discriminate on the basis of a person's "disability", if the disability is unrelated to the person's ability to perform the job in question. (775 ILCS 5/2-102)
- "Disability" shall not include any employee or applicant who is currently engaging in the **illegal use of drugs**. (775 ILCS 5/2-104)

- **Illinois Right to Privacy in the Workplace Act**
- Prohibits employers from taking adverse employment action against an individual "because the individual uses lawful products off the premises of the employer during nonworking hours."
- IL Cannabis Act amends the Right to Privacy Act definition of "**lawful products**" to mean **"products that are legal under state law."**

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What happens to Mary Jane in Illinois?

- **Does Mary Jane Win Under Illinois Right to Privacy Act?**
  - If Mary Jane is fired after Jan. 1, 2020 in Illinois for testing positive for marijuana – she might argue that, the IL Right to Privacy Act, as amended, prohibited her employer from taking adverse action against her because she was not impaired at work and used marijuana, a legal product under state law, off the premises during non-working hours.
  - IL Court should reject this argument and resolve any tension between the IL Cannabis Act and amendment to the Right to Privacy Act in favor of employers:
    - Sec. 10-50 of the Cannabis Act contains express employer protections
      - Since "Nothing" in the Cannabis Act – including the amendment to the Right to Privacy Act – can affect an employer's right to enforce its drug free workplace policy, an employer should be able to lawfully to terminate or discipline an employee for violating that policy.
      - A decision that the Right to Privacy Act trumps the express employer protections in Section 10-50 of the Cannabis Act would render those sections meaningless.
    - The Cannabis Act amended the Right to Privacy Act by expressly incorporating Section 10-50 of the Cannabis Act – as an exception to the Right to Privacy Act.
    - Legislative history of the IL Cannabis Act supports this interpretation.
  - **Prediction: Mary Jane is not dancing under Illinois Right to Privacy Act.**
    - *However - if Company does not have a written drug free workplace policy – it will be more difficult to defend against this claim.

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What happens to Mary Jane in Illinois?

- **Does Mary Jane Win Under Illinois Human Rights Act?**
  - Like *Barbuto*, Mary Jane (an employee with a medical marijuana card), might rely on the Illinois Human Rights Act and Medical Cannabis Act to argue that Illinois employer has to reasonably accommodate her use of medical marijuana.
  - Illinois Medical Cannabis Act has not been challenged in the courts by an employee.
  - **Prediction: Mary Jane *may* dance under the Illinois Human Rights Act.**
    - Illinois employer may need to engage in the interactive process upon notice of an employee's medical marijuana cardholder status.
    - However, an employer likely does not need to accommodate if the employee's use of marijuana will cause undue hardship, i.e. if the employer is forced to violate contractual or statutory obligation (such as DOT regulations) or poses a significant safety risk.

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Recent Developments: New York City and Nevada

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Laws That Prohibit Pre-Employment Drug Testing - NYC

- New York City ordinance against pre-employment drug testing:
  - April 9, 2019, NYC passed a bill which prohibits employers from pre-employment drug testing for marijuana or THC. Law goes into effect May 10, 2020.
  - Under the bill, employers, labor organizations, and employment agencies and all of their agents are prohibited from requiring a prospective employee to submit to a marijuana or THC drug test as a condition of employment.
  - The bill describes such pre-employment testing as an "unlawful discriminatory practice."
  - The bill provides for a number of carve-outs and exceptions to the applicant drug testing prohibition, including for (1) safety related positions, (2) transportation-related positions, (3) caregivers, and (4) federal contractors. If a CBA requires testing, the law will not apply.

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Nevada: Prohibition on Refusing To Hire for Positive Marijuana Test

- On June 5, 2019, Nevada became the first state to prohibit employers from refusing to hire a prospective employee because the employee tested positive for marijuana
  - This is not a prohibition of pre-employment drug testing
  - It is a prohibition of basing a decision not to hire on a positive test for marijuana
  - Should Nevada employers remove THC from the pre-employment drug testing panel?
- This prohibition does not apply to applicants for positions as a:
  (1) firefighter
  (2) emergency medical technician
  (3) motor vehicle operator and for which federal or state law requires the employee to submit to screening tests
  (4) employees who could adversely affect the safety of others

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Nevada: new hires within first 30 days

- "If an employer requires an employee to submit to a screening test within the first 30 days of employment, the employee shall have the right to submit to an additional screening test, at his or her own expense, to rebut the results of the screening test. The employer shall accept and give appropriate consideration to the results of such a screening test."
  - In this situation, employers should take into account the five-point star

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Exceptions to the Nevada law

- You can refuse to hire based on a positive marijuana drug test if a collective bargaining agreement provides that no one who tests positive for marijuana can be hired.
- You can refuse to hire based on a positive marijuana drug test if you are required to comply with the federal Drug Free Workplace Act or a federal contract.
- You can refuse to hire based on a positive marijuana drug test if the person is applying for a position funded by a federal grant.
- You can specify in an employment contract that a positive marijuana drug test may/will result in termination of employment without allowing the employee the opportunity to rebut with another test

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Checklist for When An Applicant Tests Positive for THC

- **What is the company's drug policy (if any)?**
  - Is the company a federal contractor or federal grantee? (Drug Free Workplace Act)
  - Company covered by US Department of Transportation regulations?
  - Company a state grantee?
- **What is the law in your state?**
  - Does your state have a medical marijuana law?
  - Has your state decriminalized or legalized recreational use?
  - Does your state have a drug testing law?
  - Does your state have a "right to privacy in the workplace" law or a "lawful activities" law?
  - Does your state have a handicap discrimination law?

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Dealing With On-the-job Impairment

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What do you do if …

- An employee comes back from lunch stinking like weed?
- An employee goes outside to take a "smoke" break and the smoke smells like weed?
- There's a happy hour after work at a bar located in the building, and an employee starts passing around edibles?

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Useful Guide: *Whitmire v. Wal-Mart Stores, Inc.* (D.Az., Feb. 2019)

- Carol Whitmire, a Walmart employee, obtained an Arizona medical marijuana card in 2013. In 2016, she injured her wrist on the job. Two days later she notified HR of continued swelling and pain in her wrist.
- A coordinator directed her to an urgent care clinic the next day for a wrist examination and post-accident urine drug test.
- The drug screen tested positive for marijuana.
- Walmart concluded that "upon reasonable belief, [her] positive test result [alone] for marijuana indicated that she was impaired by marijuana during her shift that same day."
- Whitmire was suspended for the positive test and eventually fired.
- Whitmire filed suit, alleging she was wrongfully terminated and/or discriminated against in violation of various state laws.
  - Walmart presented no expert testimony.

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Useful Guide: *Whitmire v. Wal-Mart Stores, Inc.* (D.Az., Feb. 2019)

- *Issue:* Whether Whitmire's positive drug screen, **alone**, was sufficient to support Walmart's "**good faith belief "** she was **impaired** by marijuana at work on the day she was injured?
- *Answer*: **No**!
  - ✓ **Termination based on positive drug test alone = discrimination**
    - Arizona's Medical Marijuana Act protects qualifying registered patients who merely test positive for marijuana.
    - Without any evidence that the employee "used, possessed or was impaired by marijuana" at work it was clear Walmart discriminated against her by suspending and then terminating her **solely** based on her positive drug screen.
    - Because Walmart did not come forth with any evidence establishing that the employee was impaired, the court ***sua sponte* granted summary judgment** in part to the employee on the question of liability on her claim for discrimination under Arizona's Medical Marijuana Act.
  - ✓ **Expert testimony required**
    - The Court also found that proving impairment based on the results of a drug screen is a scientific matter that requires **expert testimony**.
    - Without expert testimony establishing that the drug screen showed marijuana metabolites in a sufficient concentration to cause impairment, Walmart, was unable to prove that her drug screen gave it a "good faith basis" to believe she was impaired at work.

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Useful Guide: Illinois Cannabis Act

- Most medical and recreational marijuana laws allow an employer to discipline an employee for being "impaired by" or "under the influence" of marijuana during work hours. However, the terms are generally not defined.
- IL Cannabis Act
  - IL Cannabis Act allows an employer to discipline an employee based on a **good faith belief** that an **employee is under the influence or impaired.**
    - However, the employer must afford the employee a reasonable opportunity to **contest** the basis of the determination.

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Useful Guide: Illinois Cannabis Act

- The Illinois Cannabis Act provides specific symptoms to look for when making a decision that when employee is "impaired" or "under the influence" of marijuana. The **symptoms** include:
  - ❑ employee's speech
  - ❑ irrational or unusual behavior
  - ❑ carelessness that results in an injury
  - ❑ physical dexterity
  - ❑ negligence or carelessness in operating equipment
  - ❑ agility
  - ❑ disregard of employee's own safety/safety of others
  - ❑ coordination
  - ❑ an accident resulting in serious damage to equipment/property
  - ❑ demeanor
  - ❑ disruption of production/manufacturing process
- Some employers may choose to couple a marijuana impairment based decision with a drug test.
- **Remember*: Consult your state's drug-testing laws!

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Useful Guide: Vermont

- Vermont's Office of the Attorney General issued guidance to employers on its recreational marijuana law.
- Vermont prohibits random drug testing of employees.
- Vermont allows employers to **drug test** current employees, if, inter alia, they have probable cause
- The Office of the Attorney General advised employers that they may draw a "probable cause" determination from a **combination of signs** exhibited by the employee, such as:
  - ❑ stumbling
  - ❑ slurring of speech
  - ❑ odors of alcohol or other substances
  - ❑ presence of drug paraphernalia
  - ❑ observing someone use in the workplace.

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Employer Tips

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Employer Tip: Train, Train, Train

- Employers should train supervisors on marijuana-related impairment signs and procedures to follow as a result.
- Supervisors should be trained on how to recognize, properly document and promptly report the signs of impairment due to suspected marijuana use.
- This training will be very helpful in establishing that an employer had a “good faith belief” that the employee was impaired on the job and therefore that discipline was warranted and lawful.
- This training should also include reminders that company policy must be applied in a nondiscriminatory manner.

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Employer Tip: Review Your Policies

- Reconsider blanket, generally applicable drug policies.
- Employment policies that cover employees in multiple states may require the inclusion of state-specific information.
  - Evaluate whether the legalization of marijuana in Illinois and the amendments to the Right to Privacy Act will affect your workplace drug policies and employment policies currently in place, including whether to specify that on-the-job marijuana consumption or being impaired or under the influence of marijuana at work, or testing positive for marijuana in the system, are against company policy and could lead to disciplinary action, up to and including termination.
- Employers should take steps to ensure that employees clearly understand the impact of their state-specific cannabis regulations.
- If your company does not have workplace drug policies, consider adopting them.

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Employer Tip: Address The Elephant In The Room?

- Consider whether to address the legalization of cannabis at all and, if so, how; e.g., make a preemptive statement that cannabis impairment and/or usage while on the job will not be tolerated?
- Take a low-key approach to legalization and not raise it at all?
- Or is there a middle-ground approach?

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IN CONCLUSION

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Remember The Legal Weed Gold Star

Federal Law

State Anti-Discrimination Laws

State Marijuana Laws (Recreational and Medical)

State Privacy or Lawful Activities Laws

State Drug Testing Laws

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Hope this helped you to see the light

- In the immortal words sung by Jerry Garcia:

Once in a while you get shown the light
In the strangest of places if you look at it right

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