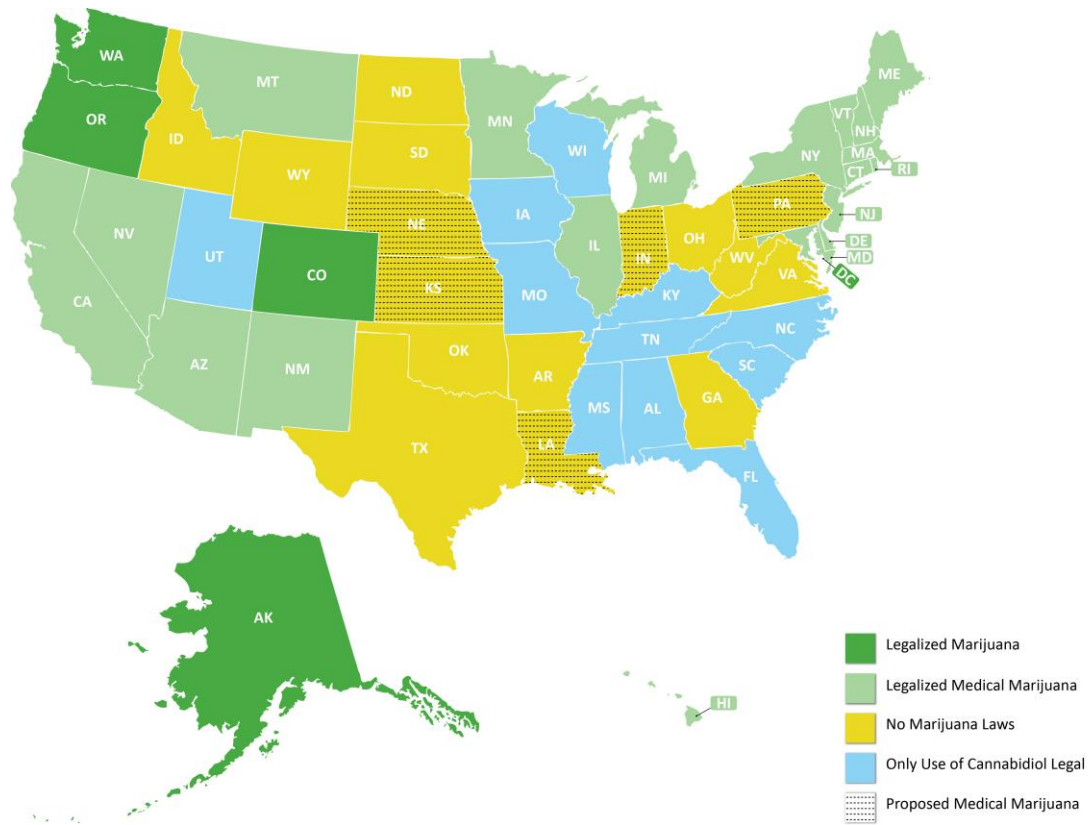


National Overview of Marijuana Laws and Proposed Legislation



Common Questions Raised in the Hospitality Industry by New Marijuana Laws

- Federal Law:
 - What is the status of marijuana under federal law?
- State Marijuana-Permissive Laws:
 - Which states have recreational or medical marijuana laws?
- Usage As A “Right”:
 - Do state marijuana-permissive laws give cardholders a “right” to use marijuana?
- Using Versus Possessing:
 - May a business, on its property, prohibit the use of marijuana? Its mere possession? Do different rules apply in private places on company property, such as within hotel rooms?

- Smoking Versus Vaporizing Versus Ingesting:
 - If a business may prohibit the smoking of marijuana on company property, can it also prohibit the vaporizing and ingesting of marijuana?
- Permitting Versus Prohibiting:
 - Conversely, may a business permit the use and possession of marijuana on company property?
- State Indoor Air Laws And State Smoking Laws:
 - Do state indoor air laws and/or other state smoking laws prohibit the smoking of marijuana, or just tobacco, within a business's property? Do such laws apply to its use by way of vaporizing and ingesting?
- Americans with Disabilities Act (ADA):
 - Does the ADA require a business to accommodate the use or possession of medical marijuana on company property?
- Out-Of-State Cards:
 - Can a business allow in-state residents with medical marijuana cards to use or possess marijuana on company property, but not recognize out-of-state cards? Conversely, do state laws allow a business to recognize out-of-state cards in order to permit the use of marijuana on its property?
- Gaming Industry:
 - If a property includes gaming-licensed operations, how might the answers to these questions differ?
- Off-Duty Legal Activities:
 - Does state law place limitations on employers' ability to discipline or discharge employees for the possession or use of marijuana off-duty?
 - Do employers need to revise their substance abuse policies in light of related legal developments?
- Cannabidiol Extract ("CBD")
 - What is CBD? Do these answers vary if the company operates in a state that permits the use of CBD only (not the full marijuana plant)?

A Developing Legal Landscape

This non-exhaustive list is informational only, not legal advice, and was last revised February 9, 2015. The following are some of the legal authorities to-date to be considered in answering these questions.

Federal Controlled Substances Act

- Marijuana is a Schedule 1 drug under federal law. The federal government considers Schedule 1 drugs the most dangerous and most addictive of all drugs. Accordingly, all possession or use of marijuana—“medical” or otherwise—is criminally prohibited under federal law. 21 U.S.C. § 841.

Americans with Disabilities Act (ADA)

- The ADA provides that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases . . . or operates a place of public accommodation.” 42 U.S.C. § 12182. However, the ADA “does not prohibit discrimination against an individual based on that individual’s current illegal use of drugs.” ADA Title III Regulations, § 36.209; accord 42 U.S.C. § 12210(a). The ADA defines “current illegal use of drugs” as “illegal use of drugs that occurred recently enough to justify a reasonable belief that a person’s drug use is current or that continuing use is a real and ongoing problem.” § 36.104 Definitions. Marijuana is illegal under federal law, and therefore, the ADA should be interpreted as not requiring a place of public accommodation to permit its use or possession. Assenberg v. Anacortes Hous. Auth., 268 F. App’x 643, 644 (9th Cir. 2008). In addition, a place of public accommodation need not accommodate smoking of any type under the ADA. 42 U.S.C. § 12201(b); ADA Title III Regulations, § 36.210.

Federal Agency Regulation

- Although the medical marijuana industry is primarily regulated at the state level, the Occupational Safety and Health Administration (OSHA) has conducted investigations and cited companies in the industry. Moreover, the Office of the General Counsel of the National Labor Relations Board (NLRB) recently released an advisory memorandum concluding that an enterprise that is involved in the medical marijuana industry is within the NLRB’s jurisdiction if it otherwise meets the NLRB’s monetary jurisdictional standards. (Northeast Patients Grp., NLRB Div. of Advice, No. 1-CA-104979, 10/25/13 [released 8/6/14]). The memorandum asserted that “the Board, like Congress, has the authority to regulate the marijuana industry, even where production and consumption is intended to be wholly intrastate.” Noting that labor unions now organize and represent workers in the marijuana industry, the memorandum further concluded that the NLRB should assert jurisdiction over medical marijuana enterprises. Thus, despite the fact that the sale and possession of marijuana is illegal under federal law, the memorandum advised the NLRB to treat medical marijuana enterprises as it would any other business.

Alabama

- Code of Ala. § 13A-12-221 (Carly's Law) (providing a defense of necessity in a prosecution for the unlawful possession of marijuana when the defendant has a debilitating epileptic condition and possesses or uses cannabidiol (CBD) pursuant to an authorized prescription) and (establishing a research and development study purposed to determine medical uses and benefits of CBD for individuals with debilitating epileptic conditions).

Alaska

- Alaska Ballot Measure 2 (allowing people age 21 and older to possess up to one ounce of marijuana and up to six plants and legalizing the manufacture, sale, and possession of marijuana and marijuana paraphernalia).
- Alaska Stat. §§ 17.37.010 to .080 (Medical Uses of Marijuana).
- Alaska Stat. §§ 18.35.300 to .330 (Alaska Smoking Law).

Arizona

- Ariz. Rev. Stat. §§ 36-2801 to 2819 (Arizona Medical Marijuana Act).
- Ariz. Rev. Stat § 36-601.01 (Smoke Free Arizona Act).
- Off-Duty Legal Activities Statute:
 - Ariz. Rev. Stat. § 36-601.02 (prohibiting discrimination on the basis of the use or nonuse of tobacco products).

Arkansas

- Currently no marijuana-permissive laws.

California

- Cal. Health & Safety Code § 11362.5 (Compassionate Use Act of 1996); Cal. Health & Safety Code §§ 11362.7 to .9 (Medical Marijuana Program).
- People v. Bly, No. C068111 (Cal. Ct. App. Dec. 5, 2012) (Washington's medical marijuana laws provide an affirmative defense to the enforcement of Washington's laws criminalizing the possession of marijuana, not California's).
- Cal. Lab. Code § 6404.5; Smoking—Buildings—Public Officers and Employees, 2003 Cal. Legis. Serv. Ch. 342 (A.B. 846); Cal. Health & Safety Code § 118974 (California Smoking Laws).
- Ross v. RagingWire Telecomms., Inc., 174 P.3d 200, 203 (Cal. 2008) (employer's firing of employee who used medicinal marijuana with physician's recommendation under the Compassionate Use Act of 1996 did not implicate employee's privacy right to determine whether to submit to lawful medical treatment so as to support cause of action for termination in violation of public policy).

- In re Forchion, 130 Cal. Rptr. 3d 690, 693 (Cal. Ct. App. 2011) (the Compassionate Use Act does not, and was not intended to, prohibit employers from discharging employees who fail a drug test for marijuana).
- James v. City of Costa Mesa, 700 F.3d 394, 398 (9th Cir. 2012), cert. denied, 133 S. Ct. 2396 (2013) (medical marijuana use did not fall within ADA exception for drug use “authorized by other provisions of Federal law” by virtue of congressional inaction).
- Off-Duty Legal Activities Statute:
 - Cal Lab. Code § 96(k) (providing that employers cannot discipline employees for lawful conduct occurring during nonworking hours away from the employer's premises).

Colorado

- Colo. Rev. Stat. § 18-18-406.3; Colo. Rev. Stat. § 25-1.5-106; Colo. Const. art. XVIII, § 14 (Medical use of marijuana for persons suffering from debilitating medical conditions); Colo. Const. art. XVIII, § 16 (Personal use and regulation of marijuana).
- The medical use laws in Colorado do not include reciprocity provisions protecting visitors from other medical use states.
- “Nothing in [the Colorado constitutional amendment legalizing the use of marijuana] shall prohibit a person, employer, school, hospital, detention facility, corporation or any other entity who occupies, owns or controls a property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property.” Colo. Const. art. XVIII, § 16(6)(d).
- “Nothing in [the Colorado constitutional amendment legalizing the use of marijuana] shall require any employer to accommodate the medical use of marijuana in the workplace.” Colo. Const. art. XVIII, § 14(10)(b).
- Colo. Const. art. XVIII, § 14(5)(a)(1) (prohibiting use of medical marijuana in a way that endangers the health or well-being of any person and prohibiting use of medical marijuana in places open to the general public).
- “It is unlawful under state law to cultivate, manufacture, distribute, or sell medical marijuana, except in compliance with the terms, conditions, limitations, and restrictions in section 14 of article XVIII of the state constitution and this article or when acting as a primary caregiver in compliance with the terms, conditions, limitations, and restrictions of section 25–1.5–106.” Colo. Rev. Stat. § 12-43.3-102(2).
- Colo. Rev. Stat. §§ 25–14–201 to 209 (Colorado Clean Indoor Air Act) (prohibiting tobacco smoke in many public areas and amended in 2010 to extend to medical marijuana smoke; including exceptions for indoor cigar-*tobacco* bars, but not for the indoor smoking of marijuana).

- Colo. Rev. Stat. § 25-14-205 (Colorado Clean Indoor Air Act) (noting that resorts have the discretion to allow or prohibit the smoking of marijuana in hotel rooms, but all smoking is limited to at most 25% of the rooms).
- Colo. Rev. Stat. § 18-18-406.3(1) (explaining that the General Assembly understood Colorado's medical marijuana amendment to have created an exception to criminal prosecution and not to be a grant to medical marijuana users of an unlimited constitutional right to use the drug in any place or in any manner).
- Formal Opinion No. 09-06, Op. Att'y Gen. 2009 WL 6084227 (Colo. A.G. Nov. 16, 2009) (concluding that the medical use of marijuana remains illegal under state law, except where allowed under the amendment).
- Beinor v. Indus. Claim Appeals Office, 262 P.3d 970, 978 (Colo. App. 2011) (holding that there is no "unfettered right to the medical use of marijuana").
- In re Rent-Rite Super Kegs W. Ltd., 484 B.R. 799 (Bankr. D. Colo. 2012) (noting as dicta that medical marijuana operations were "lawful under Colorado law").
- Young v. Larimer County Sheriff's Office, 2014 COA 119 (holding that 42 U.S.C. § 1983 does not provide a remedy for state action that violates a right created by the Medical Marijuana Amendment, article XVIII, section 14 of the Colorado Constitution because federal law criminalizes possession of marijuana).
- Off-Duty Legal Activities Statute:
 - Colo. Rev. Stat. § 24-34-402.5 (making it illegal for an employer to terminate an employee because that employee engaged in any lawful activity off the employer's premises during nonworking hours subject to certain exceptions).
 - People v. Watkins, 282 P.3d 500, 503 (Colo. App. 2012) (stating that the use of medical marijuana is lawful in Colorado and suggesting that it might be a state constitutional right).
 - Coats v. Dish Network, L.L.C., 303 P.3d 147, 150-51 (Colo. App. 2013), cert. granted, 13SC394, 2014 WL 279960 (Colo. Jan. 27, 2014) (concluding that an employee's use of marijuana outside of work is not "lawful activity" under the Colorado statute prohibiting workplace discrimination for law conduct).
 - John Campbell, *Coats v. Dish: A Chance to Clear the Legal Haze Surrounding Medical Marijuana*, 91 Denv. U.L. Rev. Online 79, 85 (2014) (arguing that most courts conclude that the medical use of marijuana is "lawful activity" and that the Colorado Supreme Court should conclude likewise).

Connecticut

- Conn. Gen. Stat. §§ 21a-408 to -408q (Palliative Use of Marijuana).
- Conn. Gen. Stat. § 19a-342 (Connecticut Smoking Laws).

- Off-Duty Legal Activities Statute:
 - Conn. Gen. Stat. § 31-40s (prohibiting employers from requiring that an employee or prospective employee refrain from smoking or using tobacco products outside the course of his employment).

Delaware

- Del. Code tit. 16, §§ 4901a to 4926a (The Delaware Medical Marijuana Act).

District of Columbia

- D.C. Code §48-904.01-1 (District of Columbia Initiative I-71 — Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Act of 2014) (legalizing the use and possession of recreational marijuana).
- D.C. Code §§ 7-1671.01 to .13 (Use of Marijuana for Medical Treatment).
- 6 DC ADC § 3632 to 3632.3 (The Department of Health Functions Clarification Amendment Act of 2006).
- Off-Duty Legal Activities Statute:
 - D.C. Code § 7-1703.03 (prohibiting employment discrimination on the basis of tobacco use except where tobacco-use restrictions or prohibitions constitute bona fide occupational qualifications).

Florida

- Fla. Stat. § 456.60 (Compassionate Medical Cannabis Act of 2014) (allowing the use of medical cannabis oil that contains more than 10% of CBD and no more than 0.8% THC to treat seizures or severe persistent muscle spasms).

Georgia

- Currently no marijuana-permissive laws.

Hawaii

- Haw. Rev. Stat. §§ 329-121 to -128 (Medical Use of Marijuana).
- Haw. Rev. Stat. § 328J-3 to 15 (Hawaii Smoking Laws).
- State v. Adler, 118 P.3d 652, 659 (Haw. 2005) (“[The Defendant] was not prosecuted under the California Health and Safety Code, and nothing in [the California medical marijuana law] prohibits prosecution under applicable Hawai’i law. Thus, [the California medical marijuana law] did not authorize [the defendant] to possess or cultivate fifty or more marijuana plants in violation of [Hawaii law].”).

Idaho

- Currently no marijuana-permissive laws.

Illinois

- 410 ILCS 130/1 to /999 (Compassionate Use of Medical Cannabis Pilot Program Act).
- Ill. Pub. Act 95-17, § 90, 2007 Ill. Legis. Serv. 1078 (Smoke Free Illinois Act).
- Phillips v. Cont'l Tire The Americas, LLC, 743 F.3d 475, 477 (7th Cir. 2014) (terminating an employee for refusing to take a drug test after filing workers compensation claim was not retaliatory under Illinois law).
- Off-Duty Legal Activities Statute:
 - Ill. Rev. Stat. ch. 820, § 55/5 (prohibiting workplace discrimination on the basis of the use of lawful products except where the employer is a non-profit organization).

Indiana

- Currently no marijuana-permissive laws.
- Off-Duty Legal Activities Statute:
 - Ind. Code § 22-5-4-1 (prohibiting employers from discriminating against an employee or prospective employee based on his/her use of tobacco products outside the course of employment, but allowing employers to implement financial incentives intended to reduce tobacco use or related to employer-provided health benefits).
- Proposed Legislation:
 - Senate Bill 284 (2015 session) (establishing a medical marijuana program and permitting caregivers and patients who have received a physician recommendation to possess a certain quantity of marijuana for treatment).

Iowa

- Iowa Code § 124.401(5) (allowing the possession or use of CBD that has less than 3% THC for the treatment of intractable epilepsy with the written recommendation of a neurologist).

Kansas

- Currently no marijuana-permissive laws.
- Proposed Legislation:
 - House Bill No. 2011 & Senate Bill No. 9 (2015 sessions) (providing for the legal use of cannabis for certain medical conditions).

Kentucky

- Ky. Rev. Stat. § 218A.010 (excluding from the definition of marijuana the substance CBD, when dispensed pursuant to the written order of a physician practicing at a hospital or state research institution).
- Off-Duty Legal Activities Statute:
 - Ky. Rev. Stat. § 344.040 (making it unlawful for an employer to discriminate against an employee because the individual is a smoker or nonsmoker as long as the individual complies with any workplace policy concerning smoking; and prohibiting an employer from requiring that an employee or applicant for employment abstain from smoking or using tobacco products outside the course of employment).

Louisiana

- Currently no marijuana-permissive laws.
- Off-Duty Legal Activities Statute:
 - La. Rev. Stat. § 23.966 (making it unlawful for an employer to require that an individual abstain from smoking or otherwise using tobacco products outside the course of employment).
- Proposed Legislation:
 - House Bill No. 6 (2015 Regular Session) (authorizing the use of medical marijuana).

Maine

- Me. Rev. Stat. tit. 22, §§ 2421 to 2430B (Maine Medical Use of Marijuana Act).
- Me. Rev. Stat. tit. 22, § 1542 (Maine Smoking Laws).
- Off-Duty Legal Activities Statute:
 - Me. Rev. Stat. tit. 26, § 597 (prohibiting an employer from requiring—as a condition of employment—that an employee or prospective employee refrain from using tobacco products outside the course of employment as long as the employee complies with any workplace policy regarding tobacco use).

Maryland

- Md. Code, Crim. Law §5-601(c)(3) (Darrell Putman Compassionate Use Act).
- Md. Code, Health-Gen. §§ 24-501 to -511 (Maryland Clean Indoor Air Act).

Massachusetts

- Mass. Gen. Laws ch. 94C, §§ 1-1 to -17 (Humanitarian Medical Use of Marijuana Act).

- The medical marijuana act also provides that “[n]othing in this law requires any accommodation of any on-site medical use of marijuana in any place of employment . . . or of smoking medical marijuana in any public place.” Mass. Gen. Laws ch. 94C, § 1-7(D).
- A person does not have a state constitutional right to possess or use marijuana in Massachusetts. See The Commonwealth of Massachusetts Office of the Attorney General, Wakefield Fall Annual Town Meeting of November 15, 2012 - Case # 6601, Warrant Article # 11 (Zoning) at 7 n.9, available at <http://www.mass.gov/ago/docs/municipal/wakefield-6601.pdf>.
- The act does not address whether a property owner can prohibit the possession of marijuana. It also does not address whether a property owner may prohibit its use without smoking, such as by ingesting a marijuana-laced edible product. And it does not address a property owner’s rights in private portions of otherwise public premises, e.g., hotel rooms.
- The Massachusetts statute addressing smoking in public places indicates that—irrespective of any need for public accommodation—a property owner has discretion to decide whether to allow smoking on its premises, including whether to allow smoking in hotel rooms. Mass. Gen. Laws ch. 270, § 22(c)(3). The statute defines “smoking” to include the use of any “non-tobacco product designed to be combusted and inhaled.” Mass. Gen. Laws ch. 270, § 22(a).
- The regulations implementing the medical marijuana law state that nothing in the regulations “[r]equires any accommodation of any on-site medical use of marijuana in any place of employment . . . or of smoking medical marijuana in any public place.” 105 C.M.R. 725.650(B)(4), available at <http://www.mass.gov/eohhs/docs/dph/regs/105cmr725.pdf>.

Michigan

- Mich. Comp. Laws § 333.26427 (Michigan Medical Marijuana Act).
- The Michigan Supreme Court has recognized that the Michigan Medical Marijuana Act “does not create a general right for individuals to use and possess marijuana in Michigan. Possession, manufacture, and delivery of marijuana remain punishable offenses under Michigan law.” People v. Kolanek, 817 N.W.2d 528, 535 (Mich. 2012).
- The act does not permit a person to smoke marijuana in any “public place.” Mich. Comp. Laws § 333.26427(b)(3)(B).
- The Michigan Attorney General has issued an opinion, concluding that medical marijuana patients may be prohibited from smoking in the public areas of food service establishments, hotels, and any other place open to the public. Additionally, the Attorney General concluded that an owner of a hotel or a similar facility can prohibit the smoking of marijuana and the growing of marijuana plants anywhere within its facility. Office of the Michigan Attorney General, 2011 Mich. Op. Att’y Gen. No. 7261 (Sept. 15, 2011).
- Health—Public Health Code—Indoor Smoking, 2009 Mich. Legis. Serv. P.A. 188 (H.B. 4377) (Dr. Ron Davis Law) (prohibiting smoking in public workplaces and restaurants).

Minnesota

- Chapter 311, S.F. No. 2470 (Minnesota Medical Marijuana Law) (permitting the use of pills, oils, or vaporized cannabis but not allowing smoking of marijuana).
- Off-Duty Legal Activities Statute:
 - Minn. Stat. § 181.938 (prohibiting an employer from refusing to hire a job applicant or disciplining or discharging an employee for using lawful consumable products if the products are used off the employer's premises outside of working hours).

Mississippi

- Miss. Code § 41-29-113 (Harper Grace's Law) (allowing for the medical use of processed cannabis plant extract, oil, or resin that contains more than 15% CBD but not more than .5% of THC; and providing an affirmative defense for defendants suffering from a debilitating epileptic condition who accessed the CBD oil in accordance with the requirements set forth in the bill).
- Off-Duty Legal Activities Statute:
 - Miss. Code § 71-7-33 (making it unlawful for an employer to require that an employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours, provided that the individual complies with laws or workplace policies regarding smoking).

Missouri

- Mo. Rev. Stat. § 195.207 (allowing for the medical use of hemp extract containing no more than 0.3% THC and at least 5% CBD to treat intractable epilepsy).
- Off-Duty Legal Activities Statute:
 - Mo. Rev. Stat. § 290.145 (making it unlawful for an employer to refuse to hire, or discharge, any individual because of his/her use of lawful alcohol or tobacco products off the premises and outside working hours unless such use interferes with the employee's duties and performance, the duty and performance of the employee's coworkers, or the overall operation of the employer's business).

Montana

- Mont. Code §§ 50-46-301 to -344 (Montana Marijuana Act).
- Mont. Code § 50-40-104 (Montana Clean Indoor Air Act).
- Off-Duty Legal Activities Statute:
 - Mont. Code §§ 39-2-313 and -314 (providing that an employer may not refuse to employ or license an individual and may not discriminate against an individual because the individual uses a lawful product off the employer's premises during nonworking hours, subject to certain exceptions).

Nebraska

- Currently no marijuana-permissive laws.
- Proposed Legislation:
 - Legislative Bill 643 (Senate Bill 2015 session) — The Cannabis Compassion and Care Act (allowing qualifying patients to possess up to 12 plants and 6 ounces of usable cannabis for approved medical use).

Nevada

- Nev. Rev. Stat. §§ 453A.010 to .810 (Medical Use of Marijuana Act).
- Nevada Gaming Control Board Notice to Licensees, 5/6/14 (warning that “investment or any other involvement in a medical marijuana facility or establish” would “tend to reflect discredit upon gaming in the State of Nevada” and may therefore be disciplinable), available here, <http://gaming.nv.gov/modules/showdocument.aspx?documentid=8874>.
- Nothing in the Nevada act expressly addresses whether—as a matter of public accommodation—a property owner, like a hotel, must permit medical marijuana use or possession in private areas within an otherwise public property, e.g., hotel rooms.
- The Nevada act defines “Medical use of marijuana” as “1. The possession, delivery, production or use of marijuana; 2. The possession, delivery or use of paraphernalia used to administer marijuana” Nev. Rev. Stat. § 453A.120.
- A registered medical marijuana user can still be prosecuted “if the possession of the marijuana or drug paraphernalia is discovered because the person engaged or assisted in the medical use of marijuana in (1) Any public place or in any place open to the public or exposed to public view” Accordingly, the plain language of the statute indicates that a public accommodation need not include permitting the use or possession of marijuana in public places. Nev. Rev. Stat. § 453A.300(1)(d).
- The Nevada Clean Indoor Air Act allows a public accommodation to prohibit smoking on the property; however, the act applies only to tobacco smoking. Therefore, Nevada’s smoking statute does not readily extend to include permission to ban smoking substances besides tobacco, such as marijuana. Nev. Rev. Stat. § 202.2483(1); Nev. Rev. Stat. § 202.2491(1)(d).
- Nev. Rev. Stat. § 453A.800 (Costs associated with medical use of marijuana not required to be paid or reimbursed; medical use of marijuana not required to be allowed in workplace; medical needs of employee who engages in medical use of marijuana to be accommodated by employer in certain circumstances).
- Off-Duty Legal Activities Statute:
 - Nev. Rev. Stat. § 613.333 (making it unlawful for an employer to fail or refuse to hire a prospective employee, or to discharge or otherwise discriminate against an employee,

because he engages in the lawful use of any product outside working hours and off the employer's premises).

- Proposed Legislation:
 - The Initiative to Regulate and Tax Marijuana (2016 Ballot Initiative) (making private possession of up to an ounce of marijuana legal for people over age 21).

New Hampshire

- N.H. Rev. Stat. §§ 126-X1 to -X11 (Use of Cannabis for Therapeutic Purposes).
- N.H. Rev. Stat. §§ 155:64 to :78 (Indoor Smoking Act).
- Off-Duty Legal Activities Statute:
 - N.H. Rev. Stat. § 275:37-a (prohibiting an employer from requiring, as a condition of employment, that an employee or applicant for employment abstain from using tobacco products outside the course of employment as long as the employee complies with any workplace policy).

New Jersey

- N.J. Stat. §§ 24:6i-1 to -16 (New Jersey Compassionate Use Medical Marijuana Act).
- N.J. Stat. §§ 26:3d-55 to -64 (New Jersey Smoke-Free Air Act).
- Off-Duty Legal Activities Statute:
 - N.J. Stat. § 34:6B-1 (prohibiting an employer from refusing to employ any person or from discharging or taking any adverse action against any employee because that person does or does not smoke or use other tobacco products).

New Mexico

- N.M. Stat. §§ 26-2B-1 to -7 (Lynn and Erin Compassionate Use Act).
- N.M. Stat. §§ 24-16-4 to -20 (Dee Johnson Clean Indoor Air Act).
- Off-Duty Legal Activities Statute:
 - N.M. Stat. § 50-11-3 (making it unlawful for an employer to refuse to hire or to discharge any individual, or otherwise disadvantage any individual, because the individual is a smoker or nonsmoker provided that the individual complies with applicable laws or workplace policies regulating smoking).

New York

- A.6357-E & S.7923, Reg. Sess. (N.Y. 2014) (New York Compassionate Care Act) (legalizing the medical use of marijuana).

- Off-Duty Legal Activities Statute:
 - NY CLS Labor § 201-d (making it unlawful for an employer to make hiring or firing decisions, or otherwise discriminate against an employee or prospective employee, because of that individual's legal use of consumable products or legal recreational activities outside of work hours, off of the employer's premises, and without use of the employer's equipment or other property).

North Carolina

- N.C. Gen. Stat. § 90-94.1 (allowing hemp extract that contains less than 0.3% THC and at least 10% CBD to be used only for the treatment of intractable epilepsy).
- Off-Duty Legal Activities Statute:
 - N.C. Gen. Stat. § 95-28.2 (prohibiting an employer from refusing to hire a prospective employee, or discharging or otherwise discriminating against any employee because the employee or prospective employee lawfully uses lawful products off the employer's premises during nonworking hours).

North Dakota

- Currently no marijuana-permissive laws.
- Off-Duty Legal Activities Statute:
 - N.D. Cent. Code § 14-02/4- 03 (making it a discriminatory practice for an employer to fail or refuse to hire a person, to discharge an employee, or to treat a person or employee adversely or unequally because of participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer).

Ohio

- Currently no marijuana-permissive laws.

Oklahoma

- Currently no marijuana-permissive laws.
- Off-Duty Legal Activities Statute:
 - Okla. Stat. tit. 40, § 500 (making it unlawful for an employer to discharge any individual, or otherwise disadvantage any individual, because the individual is a nonsmoker or smokes or uses tobacco products during nonworking hours; or to require, as a condition of employment, that an employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours).

Oregon

- Oregon Measure 91— The Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act of 2014 (legalizing the possession, manufacture, and sale of marijuana by/to persons ages 21 and older).
- Or. Rev. Stat. §§ 475.300 to .346 (Oregon Medical Marijuana Act).
- Or. Rev. Stat. § 433.845 (Oregon Indoor Clean Air Act).
- State v. Berringer, 229 P.3d 615, 618-19 (Or. Ct. App. 2010) (concluding that California's medical marijuana law did not, under the Full Faith and Credit Clause, preclude the California defendant's arrest and prosecution for marijuana possession in Oregon because the California law, by its terms, provided nothing more than a defense against the enforcement of certain California criminal laws related to marijuana, and Oregon did not and could not enforce California's laws against the defendant).
- Washburn v. Columbia Forest Prods., Inc., 134 P.3d 161, 164 (Or. 2006) (employees cannot be fired for failing a marijuana drug test; this rule only applies if the employee is disabled under O.R.S § 659A.100(1)(a)).
- Off-Duty Legal Activities Statute:
 - Or. Rev. Stat. § 659A.315 (providing that it is an unlawful employment practice for any employer to require, as a condition of employment, that any employee or prospective employee refrain from using lawful tobacco products during nonworking hours).

Pennsylvania

- Currently no marijuana-permissive laws.
- Proposed Legislation:
 - Senate Bill 3, Gen. Ass. (Pa. 2015) (Medical Cannabis Act) (legalizing the medical use of marijuana).

Rhode Island

- R.I. Gen. Laws §§ 21-28.6-1 to -13 (The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act).
- R.I. Gen. Laws § 23-20.10-3 (Public Health and Workplace Safety Act).
- Off-Duty Legal Activities Statute:
 - R.I. Gen. Laws § 23-20.10-14 (providing that no employer shall require, as a condition of employment, that any employee or prospective employee refrain from smoking or using tobacco products outside the course of his or her employment or otherwise discriminate against such employee in terms of compensations, conditions, or privileges).

South Carolina

- S.C. Code § 4-53-44 (authorizing research concerning medical cannabis as an anti-seizure medication and permitting the medical use of CBD).
- Off-Duty Legal Activities Statute:
 - S.C. Code § 41-1-85 (prohibiting employers from taking personnel actions based on use of tobacco products outside of the workplace).

South Dakota

- Currently no marijuana-permissive laws.
- Off-Duty Legal Activities Statute:
 - S.D. Codified Laws § 60-4-11 (making it a discriminatory or unfair employment practice for an employer to terminate an employee because the employee uses tobacco products off the premises of the employer during nonworking hours subject to certain restrictions).

Tennessee

- Tenn. Code § 39-17-451 (permitting a clinical research study on the use of cannabis oil for the treatment of intractable seizures and allowing medical use of CBD).
- Off-Duty Legal Activities Statute:
 - Tenn. Code § 50-1-304 (prohibiting an employer from discharging or terminating an employee solely for using an agricultural product not regulated by the alcoholic beverage commission that is not otherwise proscribed by law, provided that the employee uses such agricultural products outside of working hours or complies with all applicable employer policies regarding such use during working hours).

Texas

- Currently no marijuana-permissive laws.

Utah

- Utah Code § 58-37-4.3 (legalizing the medical use of hemp extract containing less than 0.3% THC to treat children with seizure disorders).

Vermont

- Vt. Stat. tit. 18, §§ 4472 to 4474I (Therapeutic Use of Cannabis).
- Vt. Stat. tit. 28 §§ 1742 to 1743 (Vermont Smoking Laws).

Virginia

- Currently no marijuana-permissive laws.

- Off-Duty Legal Activities Statute:
 - Va. Code §§ 2.2-2902 and 15.2-1504 (providing that no employee shall be required, as a condition of employment, to smoke or use tobacco products on the job, or to abstain from smoking or using tobacco products outside the course of his employment).

Washington

- Wash. Rev. Code §§ 69.51A.005 to 69.51A.903 (Medical Marijuana Act).
- Initiative Measure No. 502, Wash. Legis. Serv. (2011), available at http://sos.wa.gov/_assets/elections/initiatives/i502.pdf (legalizing the recreational use and possession of marijuana for people 21 years of age and older).
- Wash. Rev. Code §§ 70.160.030 to .080 (Washington Smoking Laws) (formerly Washington Clean Indoor Air Act).
- Roe v. TeleTech Customer Care Mgmt. (Colorado) LLC, 257 P.3d 586 (Wash. 2011) (holding that the Washington State Medical Use of Marijuana Act did not regulate the conduct of a private employer or protect an employee from being discharged because of authorized medical marijuana use).
- State v. Hanson, 157 P.3d 438, 439 (Wash App. 2007) (nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of marijuana for non-medical purposes) (Note: This decision may be superseded by Initiative 502).
- State v. Fry, 228 P.3d 1, 3 (Wash. 2010) (Initiative establishing medical use defense to marijuana charges did not legalize marijuana, but rather provided an authorized user with an affirmative defense if the user shows compliance with the requirements for medical marijuana possession) (Note: This decision may be superseded by Initiative 502).

West Virginia

- Currently no marijuana-permissive laws.
- Off-Duty Legal Activities Statute:
 - W. Va. Code § 21-3-19 (making it unlawful for a public or private employer to refuse to hire any individual or to discharge any employee, or otherwise discriminate against any employee, because an individual uses tobacco products off the premises of the employer during nonworking hours).

Wisconsin

- Wis. Stat. § 961.14(4)(t) (legalizing the medical use of hemp extract containing less than 0.3% THC to treat children with seizure disorders).
- Off-Duty Legal Activities Statute:

- Wis. Stat. § 111.321 (prohibiting any employer or any other person from engaging in any act of employment discrimination on the basis of the use or nonuse of lawful products off the employer's premises during nonworking hours).

Wyoming

- Currently no marijuana-permissive laws.
- Off-Duty Legal Activities Statute:
 - Wyo. Stat. § 27-9-105 (prohibiting an employer from requiring, as a condition of employment, that any employee or prospective employee use or refrain from using tobacco products outside the course of his employment, unless it is a bona fide occupational qualification).

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