

2015 HOW NEW MARIJUANA LAWS WILL IMPACT THE HOSPITALITY INDUSTRY

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HOSPITALITY LAW CONFERENCE

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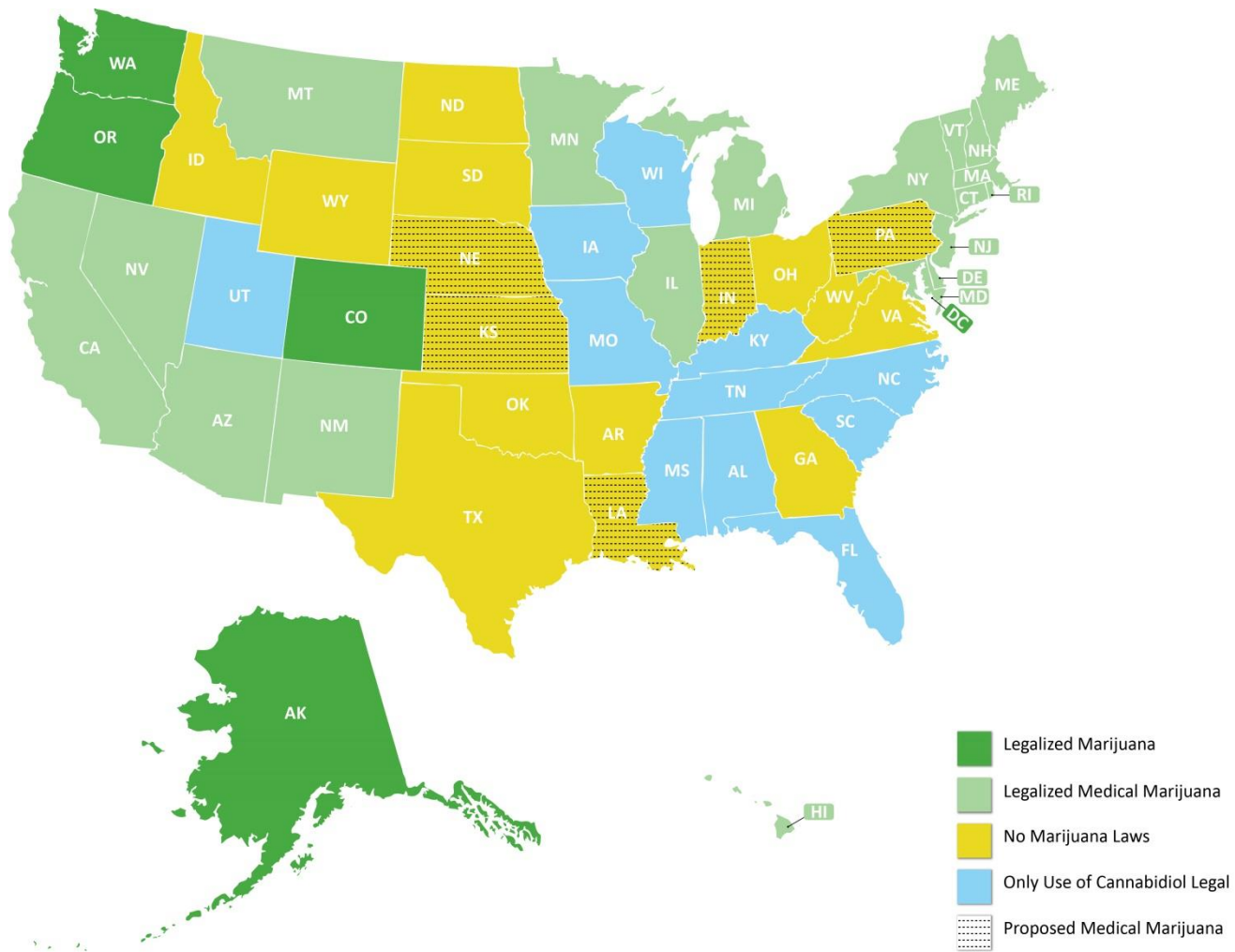


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CHANGING MARIJUANA LANDSCAPE

- Marijuana laws are expanding across the U.S.
- Different states have different laws as seen in Brownstein's 50-state survey
- This poses issues for companies in the hospitality industry
- How the Americans with Disabilities Act (ADA), the Federal Controlled Substances Act, and federal agency regulation affect new marijuana legislation

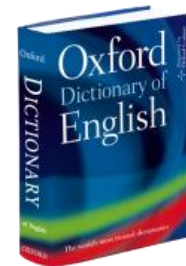


RECENT POP CULTURE DEVELOPMENTS



Waka Flocka Flame Offers \$50k For Personal 'Blunt Roller'

Posted: 09/17/2014 3:14 pm EDT | Updated: 1 hour ago



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 marijuana 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?

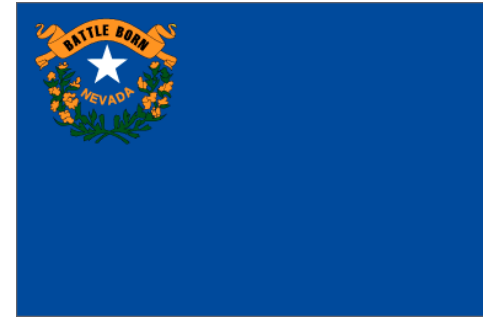


- Cannabidiol Extract (“CBD”)
 - What is CBD?
 - Do these answers vary if the company operates in a state that permits the use of CBD only (not the full marijuana plant)?



What State Are You In? It Matters!


For Example:
COLORADO VS. NEVADA





- Reciprocity for Out-of-State Medical Marijuana Cards?
 - Like the majority of states with medical marijuana laws, Colorado doesn't recognize out-of-state cards.
 - But Nevada does. As of April 2014, Nevada allows out-of-state cardholders to purchase medical marijuana.
 - Several other states also recognize out-of-state cards, including: Arizona, Montana, Maine, Rhode Island, and Michigan.



- Do Colorado's and Nevada's Clean Indoor Air Acts Differ?
 - Colorado Clean Indoor Air Act
 - The Act prohibits tobacco smoke in many public areas, and it was amended in 2010 to extend to marijuana smoke.
 - The Act includes exceptions for indoor cigar-tobacco bars, but not for the indoor smoking of marijuana.

- Nevada Clean Indoor Air Act
 - The Act allows a public accommodation to prohibit smoking on the property, but 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.
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- **Must Places of Public Accommodations Allow Guests to Use Marijuana on Premises?**
 - Colorado
 - 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.
 - Nevada
 - 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.
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- **Are Employers Required to Accommodate Medical Marijuana Use?**
 - Colorado
 - “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).
 - Nevada
 - Costs associated with medical use of marijuana are not required to be paid or reimbursed.
 - Employers are not required to allow medical use of marijuana in the workplace.
- 


- **Employer Accommodations for Marijuana Use, Continued...**
 - Nevada
 - BUT “the employer must attempt to make reasonable accommodations for the medical needs of an employee who engages in the medical use of marijuana if the employee holds a valid registry identification card, provided that such reasonable accommodation would not:
 - (a) Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or
 - (b) Prohibit the employee from fulfilling any and all of his or her job responsibilities.” Nev. Rev. Stat. § 453A.800

■ **Other Considerations**

- Gaming in 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).

- **Other Considerations, continued...**
 - Issues in Advising Marijuana Clients
 - Colorado State Rules
 - The Colorado Supreme Court permits an attorney to “assist a client in conduct that the lawyer reasonably believes is permitted by these constitutional provisions and the statutes, regulations, orders, and other state or local provisions implementing them.”
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- **Other Considerations, continued...**
 - Colorado Federal Court Rules
 - BUT the Colorado federal district court refused to adopt language permitting an attorney to assist a marijuana-industry client. The federal court, however, does allow an attorney to “advise a client regarding” Colorado’s marijuana laws and to “advise ... regarding related federal law and policy.”

- **Other Considerations, continued...**
 - The federal court's line between appropriately advising a marijuana-industry client and inappropriately "assisting" one is not clear.
 - For example, assisting a client in negotiating a lease knowing it will use the property to vend marijuana may subject a lawyer to discipline, including disqualification from practicing in federal court
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