

The Cannatourism Conundrum of On-Premise Cannabis Consumption

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April 25, 2017

It is safe to say that the United States has reached a tipping point with respect to legalizing marijuana. Cannabusinesses and gangapreneurs, along with advocates across the country, have successfully created a billion dollar industry in the face of federal prohibition. The industry has used the term “Green Rush” to describe the influx of capital, energy, and time devoted towards investing in the development of the marijuana industry, including both medical and recreational (or, “adult use,” a term used with more frequency now to reduce the stigma associated with consuming an illicit drug for fun). But to continue using the prospector terminology of the Gold Rush, there is a now a new sheriff in town: U.S. Attorney General Jeff Sessions, the individual responsible for overseeing the Department of Justice (“DOJ”), may stifle the growth of the marijuana industry.

Despite more than half of the country living in one of the 28 states that have legalized cannabis in some form, marijuana remains a Schedule I controlled substance under federal law. Still, the industry has been expanding under a period of the Cole Memo—the Obama Administration’s policy regarding limited non-enforcement of federal drug laws based on scarce federal resources, exercise of prosecutorial discretion, and reliance on robust state-level regulatory systems. Although the staying power of this DOJ policy is in danger of being eliminated or drastically changed under the new Administration, the exact nature and scope of the DOJ’s new enforcement policies are uncertain. President Trump’s campaigning and public statements demonstrate a preference for medical marijuana, and his aversion towards recreational marijuana may be tempered by the conceptual belief that marijuana legalization is a state’s rights issue. But Attorney General Sessions has long been a stalwart in the war against drugs and is undertaking a review of the current federal marijuana policies. As a result, the federal government’s official enforcement policies towards marijuana, particularly in the adult-use context, is unclear.

As if the marijuana industry was not plagued by enough uncertainty, the federal laws and enforcement priorities continue to exist in a grey area without any imminent sense of clarity. Despite this uncertainty, however, there is a multi-billion dollar industry flourishing. One in five Americans (63 million people) live in a state where adults can legally use marijuana recreationally. The industry is expected to exceed \$21 billion by 2020. Polling data demonstrate that now 60% of people support marijuana, and the results of the 2016 general election in November ushered in several new states that are continuing the adult-use marijuana trend.

With the number of recreational states doubling from four to eight, opportunities in marijuana tourism will continue to grow. Marijuana tourism or “cannatourism” is the hospitality industry trend of people traveling to states, in part, to participate in the new and legal cannabis industry. Online travel agencies and marketing services are offering opportunities for marijuana-friendly accommodations to connect travelers looking to legally consume cannabis products. People will be traveling to California and Nevada like they travel to wine country in Napa and Sonoma or gambling resorts in Las Vegas. While cannatourism may not be the sole motivating factor for these visits, it will certainly make its way onto many itineraries to accompany other adult activities. In fact, one of the preeminent experts on tourism, Arthur Frommer (of the

eponymous travel guidebooks) recently commented, in the context of the November 2016 legalization initiatives, that he expects to see a major new travel movement in marijuana tourism. Interestingly, state tourism offices are facing a marketing paradox: having to engage in educational campaigns for tourists regarding the state's marijuana laws and public consumption prohibitions, while avoiding outright promotion of the state as marijuana friendly.

The biggest impediment to a successful cannatourism market is the ability to actually consume the products that are purchased. Hoteliers operating in the new recreational marketplaces will encounter this question from their guests. The general prohibitions on public consumption of marijuana vis-à-vis tourists presents an untenable situation, and an issue that states will continue to grapple with in the coming years to resolve the cannatourism conundrum.

For example, Alaska is contemplating how to implement a license endorsement (or additional privilege) on retail marijuana dispensary licenses that would permit onsite consumption. Currently, tourists in Alaska without access to hotels, particularly the numerous tourists who visit the state on cruise vacations, have no place to consume marijuana lawfully that was purchased in retail stores. Under Alaska law, public consumption—broadly defined to include a place where the public or a substantial group of people has access—of marijuana is illegal. The phrase “in public” also includes lobbies and portions of hotels that do not constitute private rooms. Nevertheless, there is a specific exception: a designated area for onsite consumption within a licensed retail marijuana store, with prior approval. The Alaska Alcohol & Marijuana Control Office has been considering the adoption of rules that would implement this provision. The rules would create an application and approval procedure for these special onsite consumption endorsements to retail marijuana stores' licenses. If approved, this would make the on-premise consumption of marijuana a legal reality by creating the first regulated cannabis consumption bars, an unprecedented move in the industry.

Colorado is experimenting with social-use and public consumption in a different way. For example, after the historic November 2016 election, voters in the Mile High City approved Initiative 300—a unique social consumption ordinance. The Denver ordinance creates a pilot program to license businesses that have the support of a neighborhood association with a cannabis consumption permit in order to allow onsite use of marijuana in designated consumption areas. Excluded from the universe of eligible businesses are establishments with liquor licenses and marijuana dispensaries, which contrasts with the Alaska policy that expressly allows retail marijuana stores to obtain a license endorsement for onsite consumption. Accordingly, under the Denver ordinance, patrons would be required to bring their own cannabis products to consume in the designated areas of the licensed premises, which could include indoor and outdoor areas, depending on the method of consumption (for example, indoors for edibles and outdoors for smoking).

The execution and success of the Denver and Alaska initiatives will provide valuable insights to the new adult-use states as they craft rules to implement their own recreational marijuana industries to address the issue of social, onsite consumption. Nevertheless, until these laws and regulations have been formalized and implemented, there will continue to be a cannatourism problem. It is important to understand that, like the alcohol beverage industry, every state and local jurisdiction will regulate this product differently by taking into account community standards and preferences. It likely will be a long time before we see fully-functioning marijuana bars or restaurants with sommelier-inspired cannabis-food pairings. Consequently, in the absence of public use possibilities for cannatourists or other guests inclined to participate in the recreational marijuana market, out-of-town visitors will require a private space to safely and legally consume cannabis. So the question for your company at the next board meeting is: How will you respond?

Will you take a conservative approach to see how the industry and regulatory structures develop? Or a proactive one that adapts to the new cannatourism trends to meet consumer demand?

Best Practice Tips:

- Determine if operating a marijuana-friendly accommodation is a preferred business objective to gain competitive advantages, particularly in emerging tourism markets like California and Nevada, while understanding the federal criminal risks and associated enforcement policies and priorities as they develop.
- Create corporate policies for marijuana use, taking into account delivery services and other disruptive technologies that will allow guests to obtain and consume cannabis products, particularly edibles, concentrates, and other novel forms of non-combustible smoking devices.
- Understand state laws in terms of public versus private use, non-smoking policies, clean indoor air acts, and local ordinances regulating smoking and public consumption.
- Train staff using responsible alcohol vendor practices to understand the effects of alcohol and marijuana intoxication, create standard operating policies that address the dual-use problem of guests consuming both alcohol and cannabis, and evaluate the related insurance and dram shop issues facing a licensed business.

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