



LEGAL UPDATE FOR INLAND PRESS

Marijuana In the Workplace: What's the Current Law and What Does the Future Hold?

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Overview of State Laws

Jurisdictions Authorizing MEDICAL Marijuana Use

1. Alaska
2. Arizona
3. Arkansas
4. California
5. Colorado
6. Connecticut
7. Delaware
8. District of Columbia
9. Florida
10. Georgia
11. Guam
12. Hawaii
13. Illinois
14. Louisiana
15. Maine
16. Maryland
17. Massachusetts
18. Michigan
19. Minnesota
20. Missouri
21. Montana
22. Nevada
23. New Hampshire
24. New Jersey
25. New Mexico
26. New York
27. North Dakota
28. Ohio
29. Oklahoma
30. Oregon
31. Pennsylvania
32. Puerto Rico
33. Rhode Island
34. Utah
35. Vermont
36. Washington
37. West Virginia



State Medical Marijuana Laws That Expressly Prohibit Employment Discrimination

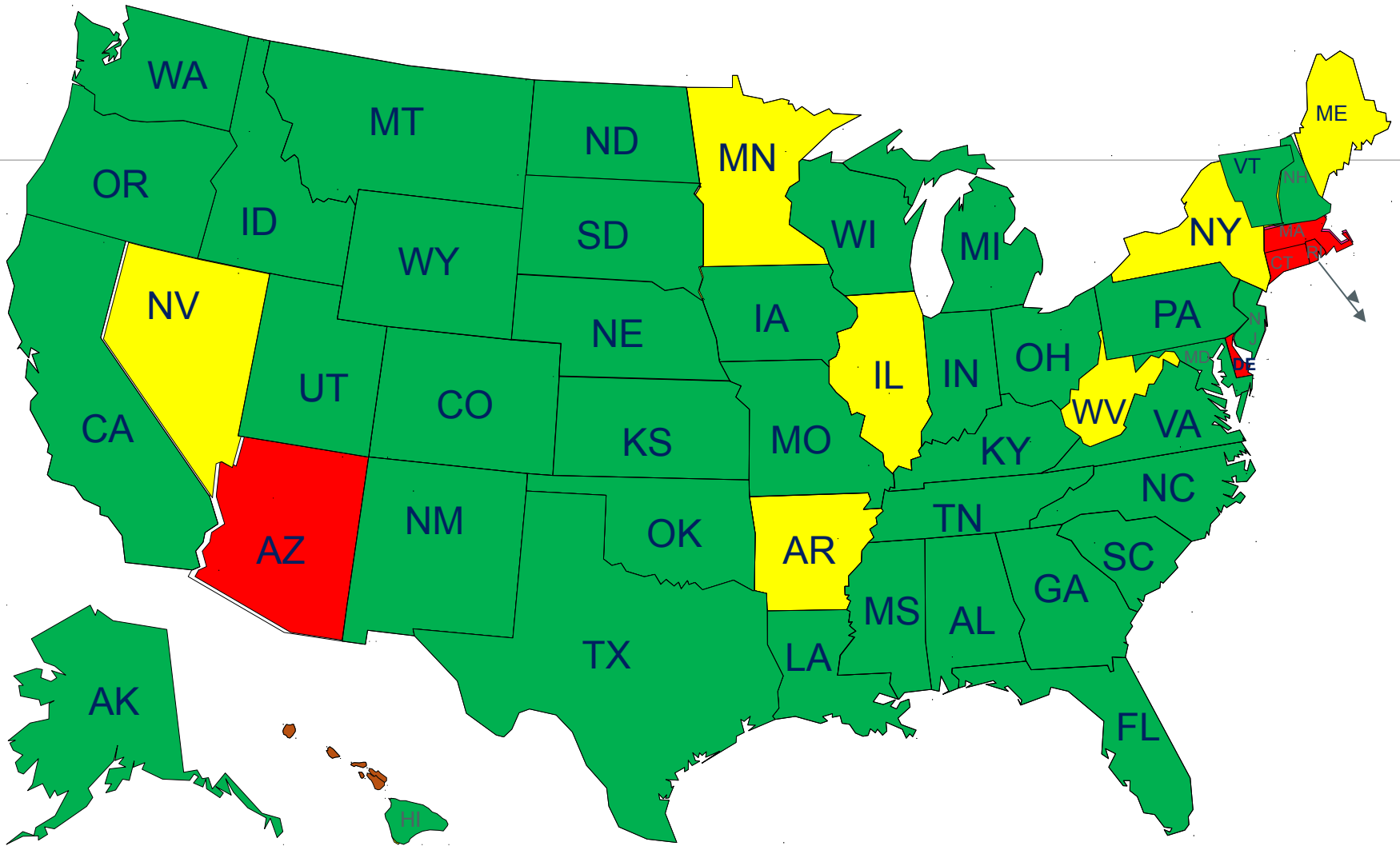
1. Arkansas
2. Arizona
3. Connecticut
4. Delaware
5. Illinois
6. Maine
7. Minnesota
8. Nevada
9. New York
10. Pennsylvania
11. Rhode Island

For Example, Connecticut's Medical Marijuana Law Says:

“No employer may refuse to hire a person or may discharge, penalize or threaten an employee solely on the basis of such person's or employee's status as a qualifying patient . . .”

Arizona's Medical Marijuana Law Says:

- “[A]n employer may not discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person based upon either:
 1. the person’s status as a cardholder.
 2. a registered qualifying patient’s positive drug test for marijuana...unless the patient used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment.”



State vs. Federal Law: Marijuana Use and the Workplace

State Marijuana Law; Federal Law; And Workplace Realities

- Controlled Substances Act (21 USC. s. 801et. seq.) (“CSA”)
 - Marijuana is classified as a Schedule I substance under the CSA and thus illegal to possess or use under federal law (s.844(a)).
 - high potential for abuse;
 - no currently accepted medical use; and
 - lack of accepted safety for use of the drug or other substance under medical supervision.
- Like Heroin and Mescaline.



Federal Law Continued

- Drug Free Workplace Act 1988
 - Applies to some federal contractors and all grantees.
 - Requires drug-free workplace.
- Americans with Disabilities Act
 - “Qualified individual with a disability” does not include individuals “currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.”
 - Defines illegal drugs as those deemed unlawful under the federal Controlled Substances Act, including marijuana.

Case Law Developments

Pro-Employer Decisions: The Early Trend

- *Ross v. RagingWire Telecom.* (California Supreme Court, 2008)
- *Emerald Steele Fabricators v. Bureau of Labor and Ind.* (Oregon Supreme Court, 2010)
- *Roe v. Teletech Customer Care Mngt.* (Washington Supreme Court, 2011)
- *Coats v. Dish Network* (Colorado Supreme Court, 2015)
- *Casias v. Wal-Mart Stores* (6th Cir., 2012) (under Michigan law)
- *Garcia v. Tractor Supply Co.* (D. New Mexico, 2016)
- *Carlson v. Charter Communs.* (D. Montana, 2017)

Two Common Threads In Pro-Employer Decisions:

- Employers need not tolerate employee use of medical marijuana.
- Acknowledgement of illegality under federal law.

Pro-Employee Decisions: The Recent Trend and Likely Future In Many States

- *Barbuto v. Advantage Sales and Marketing* (Mass. Supreme Court, 2017)
- *Callaghan v. Darlington Fabrics* (R.I. Superior Court, 2017)
- *Noffsinger v. SSC Niantic Operating Co.* (D. Conn.)
 - *Noffsinger I* (2017) – Denying Employer’s motion to dismiss
 - *Noffsinger II* (2018) – Granting Employee’s motion for summary judgment

Common Threads In Pro-Employee Decisions:

- Lawsuits based on employee/applicant use of medical marijuana are viable – under medical marijuana laws and/or state anti-discrimination laws.
- Deference to federal illegality of marijuana (under the CSA) is unnecessary and reliance on CSA is risky.
- Interactive process and reasonable accommodation may be required.
 - But undue hardship is an available defense.

Practical Implications For Employees, Especially Those Who Drug Test

In The Wake Of Pro-Employee Decisions

- A blanket policy of refusing to hire/employ individuals who use marijuana for medical purposes regardless of position/duties, is risky in some states.
- Consider what the state law says about employment rights/obligations.
- Evaluate:
 - Whether to test for marijuana pre-employment;
 - Legitimacy of employee/applicant medical marijuana use;
 - Consider interactive process; and
 - Undue hardship -- evaluation and employer burden.

What Can Employers Do?

- Be Proactive:
 - Look at Policies and Practices – Evaluate
 - For Drug Use
 - For Drug Testing
 - For Reasonable Suspicion Assessments
 - Are you in a state with a medical marijuana law?
 - Does it address marijuana and the workplace; employer rights/obligations?
 - Does it clearly define what is and is not permissible, when, and where?
 - Medical certification process
 - Train Managers