


Marijuana in Schools: What Educators Need to Know


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1

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2

Agenda

- Overview of federal and state laws on marijuana
- Employee issues
 - Under the influence at work and drug testing
 - Off duty use
 - Discrimination
 - Disability accommodations
- Student issues
 - Under the influence at school
 - Requests for accommodations related to marijuana use
 - Requests for nurse to administer medical marijuana


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3

Applicable Definitions

- **Cannabis** – Cannabis is the plant of the Cannabaceae family and contains more than eighty biologically active chemical compounds. The most commonly known compounds are delta-9-tetrahydrocannabinol (THC) and cannabidiol (CBD).
- **Components**
 - **THC** – Produces psychoactive and euphoric effects on the body (the “high” normally associated with cannabis)
 - **CBD** – Can be derived from any cannabis plant, including hemp; Can be processed into a variety of different medications including topicals, oils, and tinctures




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4

Definitions Continued



Marijuana
An overarching name for the cannabis sativa plant with levels of THC

Medical Marijuana

Marijuana used to alleviate the symptoms of certain medical conditions or diseases

Where legal, doctor must prescribe a card to a patient in order to purchase products from a dispensary.

Recreational Marijuana

Used without medical prescription

Where legal, can be purchased at a dispensary by a person 21 or older with a valid ID.

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5

Federal Law

Controlled Substances Act (CSA):

- Marijuana is a Schedule I drug (21 U.S.C. § 812)

2018 Farm Bill:

- Removed hemp and derivatives of cannabis with ≤0.3 percent THC on a dry weight basis from the definition of marijuana in the CSA.

Gonzales v. Raich, 545 U.S. 1 (2005):

- Congress may criminalize the production and use of cannabis even if state law allows its use for medicinal purposes.

Drug Free Workplace Act:

- Requires recipients of federal funds to ensure a drug free workplace; (41 U.S.C. § 8103; 20 U.S.C. § 7101 *et. seq.*)

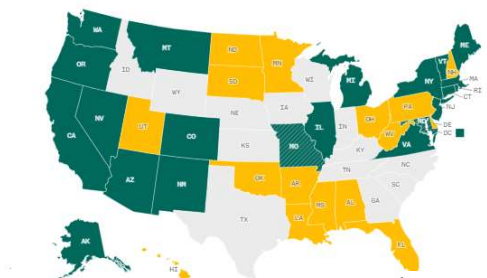
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6

State Law – Marijuana

Places that allow marijuana for medical and recreational use

■ Medical
 ■ Recreational and medical
 Voted in, awaiting legislation



Notes: Data current as of Nov. 9, 2022. Does not include CBD/Low THC programs.
Source: National Conference of State Legislatures
Graphic: Danica Jefferies / NBC News

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7

Missouri Const. Art. 14, Sec. 1 – Medical use

- In November 2018, Missouri voters approved a ballot measure to amend the Missouri constitution to legalize the use of marijuana for medical purposes.
- Therefore, “patients with qualifying medical conditions . . . [have] the right to use medical marijuana for treatment under the supervision of a physician.” See Mo. Const. Art. 14, § 1.1 (Purposes).
 - “Qualifying medical conditions” includes “in the professional judgment of a physician, any other chronic, debilitating, or other medical condition, . . .”
- However, even if employee is a “qualifying patient,” they do not have the right to be under the influence of marijuana while at work.
- Missouri employers may discipline employees, up to and including termination, for being under the influence while at work and/or attempting to work while under the influence. See Mo. Const. Art. 14, § 1.7(d).

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8

Missouri Const. Art. 14, Sec. 1 – Medical use

- Employees have protections under Art. 14, Sec. 1.
- Unless a failure to do so would cause employer to lose monetary or licensing-related benefit under federal law, an employer may not discriminate in hiring, termination, or terms or conditions of employment based upon either of the following:
 - Employee's status as a "qualifying patient or primary caregiver" who has a valid identification card, including the person's legal use of lawful marijuana product outside of the workplace during non-working hours; or
 - A positive drug test for marijuana by a person who has a valid qualifying patient identification card unless that person used, possessed, or was under the influence of medical marijuana inside the workplace or during hours of employment.

See Mo. Const. Art. 14, § 1.7 (Additional Provisions).

9

Missouri Const. Art. 14, Sec. 1 – Medical use

- But there's a limitation on employee protections:
 - Employers can still take action against employees whose use of marijuana affects *in any manner*:
 - Their ability to perform job-related responsibilities;
 - Safety of others; or
 - Conflicts with a bona fide occupational qualification reasonably related to the employee's job.
- See Mo. Const. Art. 14, Sec. 1.7(15).

10

Missouri Const. Art. 14 – Recreational use

- In November 2022, Missouri voters passed Amendment 3 to legalize *recreational* marijuana by adults over age 21: 53.11% voted yes; 46.89% voted no
 - Took effect Dec. 8, 2022.
- However: "This section is not intended to allow for the public use of marijuana, driving while under the influence of marijuana, *the use of marijuana in the workplace*, or the use of marijuana by persons under twenty-one years of age." Art. 14

11

Missouri Const. Art. 14 – Recreational use

- "This section does not require an employer to permit or accommodate conduct otherwise allowed by this section in any workplace or on the employer's property. This section does not prohibit an employer from disciplining an employee for working while under the influence of marijuana. This section does not prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because that person was working while under the influence of marijuana." Mo. Const. Art. 14, Sec. 3(3).
- So...
 - Missouri employers have the right to prohibit possession of marijuana in the workplace.
 - Missouri employers have the right to discipline employees, up to and including the termination of employment, for working while under the influence of marijuana.

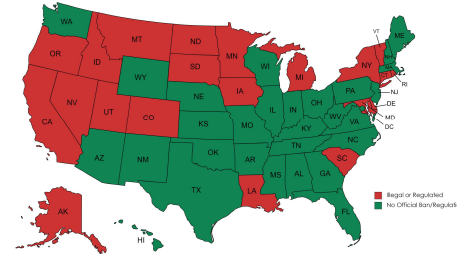
12

Employees Under the Influence

- Employers may still prohibit employees from being "under the influence" at work, which includes marijuana.
- While private employers are generally not required to conduct drug tests, recipients of federal funds and businesses that employ certain regulated professionals (e.g., pilots or school bus drivers) are required to drug test.
 - NOTE: Requirements established by the Department of Transportation (DOT) subject school bus drivers to drug testing.
- Many school districts have existing drug testing policies and procedures that may need updating based on the ever-changing law relating to marijuana/cannabis/CBD.



State Law: Delta 8 THC Legality



What is Delta-8 THC?

- Psychoactive substance found in the Cannabis sativa plant
- Delta-8 THC is not found in significant amounts in the cannabis plant.
- Concentrated amounts of delta-8 THC are typically manufactured from hemp-derived cannabidiol.

Source: <https://cbdoracle.com/news/policy/delta-8-thc-legal/>

Drug Testing

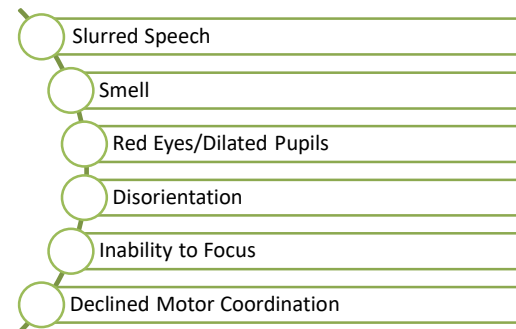
When can you drug test?

- Generally, drug testing is still permissible, even in states where marijuana is legal.
- However, some states have placed limits on it.
 - In New York, where recreational and medical cannabis use are legal, employers are prohibited from testing current and prospective employees.
 - In Nevada, job denial based on a positive cannabis test result is prohibited.

Effectiveness: Drug testing is complicated

- Drug tests are not dependable to determine whether an employee is presently under the influence of marijuana
- Available tests only provide results on whether someone has used marijuana recently, not whether they are presently under the influence, when they used marijuana, or the quantity that was used.
- Tests can pick up traces of marijuana up to 30 days and longer for hair tests.

Reasonable Suspicion Drug Testing



Off Duty Use

- Although states now allow adults to use marijuana medically, recreationally or both, in many states, people can be terminated or denied a job for off duty use.
- Some states prohibit employers from **discriminating** against medical marijuana cardholders or from terminating employees for testing positive for marijuana due to **off-duty use**.
- In contrast, employers in other states can terminate employees who test positive for marijuana, even if the use was off-duty and for a medical condition.
- Overall, remember, employers can still prohibit the use **at the workplace** and **on-the-job intoxication**.

17

Discrimination Issues

- Certain states have anti-discrimination provisions in their laws. These provisions vary by state.
 - Including Arizona, Arkansas, California, Connecticut, D.C., Delaware, Illinois, Maine, Minnesota, Nevada, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Utah, and West Virginia
- Other states have protections from courts:
 - E.g., Massachusetts' medical marijuana law doesn't contain explicit employment protections, but the state supreme court granted the protection through the state statute prohibiting bias against disabled workers for medical marijuana use.
- While it may be unlawful in some jurisdictions to discriminate against workers simply because they have a medical marijuana card, employers can still require sobriety at work and treat marijuana as they would alcohol or prescription drugs.

18

Accommodation Issues

- Americans with Disabilities Act:
 - Does not protect illegal drug use.
 - Because marijuana is illegal under federal law (recreational and medicinal), employees who use marijuana are not currently protected under the ADA.
 - Under federal law, employees may be terminated for current illegal drug use.
 - NOTE:
 - An employee who no longer uses illegal drugs and is considered officially rehabilitated or in the process of being rehabilitated is a "qualified individual with a disability."
 - The underlying disability may need reasonable accommodation.
- State Law:
 - Nevada explicitly requires an employer to attempt to make a reasonable accommodation of medical marijuana use for employees holding a "valid registry identification card;" can be overcome if the accommodation would (1) "pose a threat of harm or danger to persons or property," (2) impose an undue hardship on the employer, or (3) "prohibit the employee from fulfilling any and all of his or her job responsibilities."
 - New York recognizes certified patients as having a "disability" under New York's Human Rights Law.
 - New Hampshire's Supreme Court held that an employer can be held liable for employment discrimination if it fails to consider medical cannabis as a reasonable accommodation.

19

Students & Legalized Marijuana

- States that have legalized recreational marijuana have generally only legalized consumption of marijuana by adults.
 - For example, in Missouri, that's adults age 21 and over.
 - *That doesn't include typical K-12 students.*
- Therefore, Marijuana is still illegal for almost all students to consume for recreational purposes.
 - Consequently, behavior codes that include consequences for student use or possession at school may remain in force.
 - Students can be prohibited from being under the influence at school.
- The primary issue for students remains how to handle medical marijuana and requests for accommodations.

20

Student accommodation requests

- General reminders:
 - School districts are free to prohibit marijuana at school and to discipline students for being under the influence of marijuana at school, even where medical/recreational marijuana is legal under state law.
 - So it is not a required accommodation to allow a student to come to school high.
 - School districts do not have to store or allow students to bring medical marijuana on campus. It's still an illegal drug at the federal level.
- In extreme cases, may not foreclose option of convening IEP/504 team to consider student's request for medical marijuana accommodation at school.
 - Doesn't mean it will be granted; just provides another safeguard because waiver of policy is a possible accommodation.

21

Student accommodation requests

- Topics that policy should address:
 - Marijuana is not permitted in school district buildings;
 - Students and employees will be subject to discipline for being under the influence of marijuana on campus and at school-sponsored events;
 - Administration of any medication by nurse will be approved only if there is a written medical directive provided by doctor about why it must be done at school and decision by IEP/504 team or in student health plan.
- If a student's parent claims a need for the student to consume medical marijuana/CBD/etc. during the school day, get information from physician.
- Do not have to allow use on campus.

22

Nurse administration of medical marijuana/CBD

- Even in states where medical marijuana is legal, because of federal law conflict, schools are free to have policy against nurse administration of marijuana to students.
- Policy should state that school district will not administer any medication that is not regulated by the U.S. Food and Drug Administration.
 - This also helps address the myriad CBD products on the market, most of which are not FDA approved.
- CBD products may qualify as over-the-counter medications, so policy needs to address.
- Consider a policy to allow *high school students* to possess and self-administer legal non-prescription medications that are identified on the student's health form and approved by parent/guardian.
- That way, unless parents provide permission for CBD possession or self-administration at school, or it is otherwise authorized by a medical professional, students have no right to possess CBD at school.

23

CLE Credits

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|--------------------------------|--------------------------------|
| • Arizona: 1.0 General | • Nebraska: 1.0 General |
| • Colorado: 1.0 General | • Nevada: 1.0 General |
| • Florida: 1.0 General | • Oklahoma: Pending |
| • Kansas: 1.0 General | • Texas: 1.0 General |
| • Missouri: 1.2 General | |

If you would like CLE credits, please send an email to education@spencerfane.com with your bar numbers.

24

Thank you!



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