

GUIDE

# RECREATIONAL MARIJUANA: WHAT EMPLOYERS NEED TO KNOW

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# INTRODUCTION

The growth of legalized recreational marijuana across the U.S. continues unabated. And that has created additional compliance issues for employers.

From pre-employment hiring regulations to drug testing rules and laws that allow off-duty use, employers have several items to consider regarding legalized marijuana. Meanwhile, public sentiment has begun to swing toward favoring legalization over the past several years, which likely means more compliance concerns moving forward.

Plus, recreational marijuana becoming legal recently in New York and Virginia, employers have more locations to worry about.

This guide focuses on the 16 states, plus Washington, D.C., where recreational marijuana is illegal. It does not include information on states where medicinal marijuana is legal. Often, employees with legitimate medical marijuana cards are afforded additional protections.

The items outlined in this guide apply to most situations. Certain industries and jobs, such as those related to safety or fall under federal rules, may be exempt from protections.

Employers do have the right to maintain a drug-free workplace, despite its legality in certain states. As always with this topic, it should be noted that marijuana remains illegal at the federal level.

*\*While South Dakota voters passed a recreational marijuana ballot initiative in 2020, it is currently tied up in litigation and is not included in this guide.*

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# MARIJUANA LAWS

State	Pre-Employment Drug Screening	Off-Duty Use Protected	Testing Existing Employees	Additional Notes
Alaska	Allowed	No	Allowed	Alaska does not offer employee protections for recreational use.
Arizona	Allowed	No	Allowed after an employee has received the employer's drug testing policy.	Employers cannot discriminate against workers, as well as job applicants, who have a medical marijuana card.
California	Allowed	No	Allowed in certain instances: the employee seems to be high at work, was involved in a workplace accident, works in a safety-related position or is coming back from rehab.	Lawmakers have introduced a bill that would offer further protections for job applicants and employees for marijuana use.
Colorado	Allowed	No	Follows federal law when required.	Legislation to protect employees from adverse action because of off-duty use has been introduced in the Colorado Legislature.

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State	Pre-Employment Drug Screening	Off-Duty Use Protected	Testing Existing Employees	Additional Notes
Illinois	Allowed	Yes	Allowed	If an employer finds that a worker is under the influence of marijuana, the employer must allow the employee a reasonable opportunity to contest that determination.
Maine	Allowed after employee receives drug-testing policy.	Yes	Allowed	While testing employees is allowed, the presence of marijuana can create problems because it does not show where the employee used the drug.
Massachusetts	Allowed after a job offer has been made.	No	Allowed, but must be job-related and consistent with business necessity.	The state offers little guidance on workplace issues.
Michigan	Allowed	No	Allowed	The law does not require accommodations for recreational use.
Montana	Allowed	No	Allowed	Montana was among the states where voters passed a marijuana-related ballot measure in 2020.

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State	Pre-Employment Drug Screening	Off-Duty Use Protected	Testing Existing Employees	Additional Notes
Nevada	<p>It is unlawful for employers in Nevada to refuse to hire someone based on the presence of marijuana in pre-employment drug screenings.</p> <p>It does not apply to:</p> <ul style="list-style-type: none"> <li>• Firefighters</li> <li>• Emergency personnel</li> <li>• Drivers</li> <li>• Workers who, "in the determination of the employer, could adversely affect the safety of others."</li> </ul>	Yes, though there is some ambiguity within the law.	Cannot test within the first 30 days of employment.	Nevada was the first state to pass a law that makes it illegal to not hire an applicant based on the presence of marijuana in a pre-employment drug test.
New Jersey	Allowed	Yes	Allowed if the employer suspects a worker is high on the job, if the employee was involved in an accident or the employer has a reasonable suspicion of use on the job.	There are exceptions for off-duty use and testing depending on job type.

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State	Pre-Employment Drug Screening	Off-Duty Use Protected	Testing Existing Employees	Additional Notes
New York	Employers cannot reject applicants based on the presence of marijuana in a pre-employment screening.	Yes	Allowed	There are certain jobs that do allow for pre-employment screenings, including law enforcement, construction workers on public projects, jobs requiring a commercial license, jobs involving the care of vulnerable people and those that impact health or safety of the public.
Oregon	Allowed if the employer has a reasonable suspicion the applicant may be under the influence of a controlled substance.	No	Allowed	While there are fewer protections for marijuana users in Oregon, many companies have voluntarily loosened testing policies.
Vermont	Testing allowed with advance written notice to applicant, after offer of employment has been made, and if test is part of pre-employment physical.	No	Allowed	Legalization of marijuana use and possession begins July 1, 2021. The date was moved up from 2024, when sales will be legal.

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# MARIJUANA LAWS

State	Pre-Employment Drug Screening	Off-Duty Use Protected	Testing Existing Employees	Additional Notes
Virginia	Allowed	No	Once an employee is hired, Virginia law generally prohibits employers from requesting or requiring that an employee submit to a drug test as an expressed or implied condition of employment.	Employers can test workers if certain conditions exist: probable cause of use at work, rehab situations and others.
Washington	Testing allowed with advance written notice and after an offer of employment has been made.	No	Allowed	A proposed bill would update Washington law to ensure employers can't reject job applicants due to a positive test for marijuana in a pre-employment drug screening.
Washington, D.C.	Allowed	No	Allowed	Marijuana use is decriminalized but not sold in dispensaries.

**Sources:**

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# CONCLUSION

The expanded legalization of marijuana gives employers a number of items to consider. Depending on the job market, industry type and more, employers may want to examine their policies and procedures, especially as it relates to hiring and drug testing.

With decriminalization of marijuana becoming more accepted, even at the federal level, the complexities of handling these myriad laws will likely become more challenging in the future.

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