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National Survey on Marijuana in the Workplace and Drug Testing Laws

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About the National Survey on Marijuana in the Workplace and Drug Testing Laws

This survey is provided by Fox Rothschild's Cannabis Law and Labor & Employment practices as a quick reference to the relevant laws and regulations governing how workplaces should respond to the growing trend of legalizing marijuana for medical and recreational use in jurisdictions throughout the United States. In particular, the survey provides links to laws and regulations governing medical marijuana, recreational marijuana and occupational drug testing laws in each state where marijuana has been legalized, as well as summaries of important court rulings interpreting these rules.

Fox's Cannabis Law Practice includes attorneys who are experienced in counseling employers in the public, private and federal contracting sectors. Our team has helped shape the regulatory landscape in key markets where cannabis is legalized, deepening our knowledge of the ways employment relationships are affected by marijuana legalization. We help clients formulate workplace and drug testing policies that comply with state marijuana and employment laws, and we advise on complex hiring and termination decisions. Our guidance also extends to employee training, where we aim to empower Human Resources professionals and management personnel to effectively handle cannabis-related employment challenges.

About Fox Rothschild

Fox Rothschild LLP is a national law firm that delivers strategic and practical solutions for clients ranging from family-run businesses to multinational corporations. Home to more than 950 attorneys in offices coast to coast, Fox offers clients a team of accomplished professionals who have honed their legal skills in government and industry, who appreciate the fluctuating nature of today's competitive business environment and who excel at crafting the legal solutions that match our clients' goals.

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Alaska

Medical Marijuana Laws	Medical Uses of Marijuana, Alaska Stat. §§ 17.37.010 to 17.37.080
Workplace Medical Marijuana Laws & Cases	Alaska Stat. § 17.37.040(d)(1) “Nothing in this chapter requires any accommodation of any medical use of marijuana (1) in any place of employment.”
Recreational Marijuana Laws	The Regulation of Marijuana, Alaska Stat. Ann. §§ 17.38.010 to 17.38.900
Workplace Recreational Marijuana Laws & Cases	Alaska Stat. § 17.38.220 “Nothing in this chapter is intended to require an employer to permit or accommodate the use, consumptions, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees.”
Workplace Drug Testing Laws	Drug and Alcohol Testing by Employers, Alaska Stat. §§ 23.10.600 to 23.10.699 Luedtke v. Nabors Alaska Drilling, Inc., (768 P.2d 1123, 1130 (Alaska 1989)) “The parties in the case at bar have failed to produce evidence that Alaska's constitutional right to privacy was intended to operate as a bar to private action, here Nabors' drug testing program.”

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Arizona

Medical Marijuana Laws	Arizona Medical Marijuana Act, A.R.S. §§ 36-2801 to 36-2819
Workplace Medical Marijuana Laws & Cases	<p>A.R.S. § 36-2802 “This chapter does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal or other penalties for engaging in the following conduct: A. Undertaking any task under the influence of marijuana that would constitute negligence or professional malpractice.”</p> <p>A.R.S. § 36-2811(B) “A registered qualifying patient or registered designated caregiver is not subject to arrest, prosecution or penalty in any manner, or denial of any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau...”</p> <p>A.R.S. § 36-2813(B) “Unless a failure to do so would cause an employer to lose a monetary or licensing related benefit under federal law or regulations, an 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 components or metabolites, unless the patient used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment.”</p> <p>Whitmire v. Wal-Mart Stores Inc., 359 F. Supp. 3d 761 (D. Ariz. 2019) “Following Noffsinger and Chase, the Court concludes that there is an implied private cause of action for violations of § 36–2813(B) of the AMMA [Arizona Medical Marijuana Act].</p> <p>“...It is undisputed that Plaintiff, a registered qualifying patient, was suspended and ultimately terminated because of her positive urine screen showing the presence of marijuana metabolites ... Sections 36-2813(B)(2) and 36-2814(A)(3) of the AMMA grant Plaintiff protection against suspension and termination for merely testing positive</p>



	for marijuana metabolites. In the absence of any expert testimony or evidence demonstrating impairment, the Court will, pursuant to Rule 56(f), <i>sua sponte</i> grant summary judgment in part to Plaintiff solely on the question of liability on the Second Count of her Complaint alleging discrimination under the AMMA.”)
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.
Workplace Drug Testing Laws	<p>Arizona Drug Testing of Employees Act, A.R.S. §§ 23-493 to 23-493.12</p> <p>A.R.S. § 23-493 (7) “‘Impairment’ means symptoms that a prospective employee or employee while working may be under the influence of drugs or alcohol that may decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, walking, standing, physical dexterity, agility, coordination, actions, movement, demeanor, appearance, clothing, odor, irrational or unusual behavior, negligence or carelessness in operating equipment, machinery or production or manufacturing processes, disregard for the safety of the employee or others, involvement in an accident that results in serious damage to equipment, machinery or property, disruption of a production or manufacturing process, any injury to the employee or others or other symptoms causing a reasonable suspicion of the use of drugs or alcohol.”</p> <p>A.R.S. § 23-493.05 “An employer may take adverse employment action based on a positive drug test or alcohol impairment test.”</p> <p>A.R.S. § 23-493.06 “A. No cause of action is or may be established for any person against an employer who has established a policy and initiated a testing program in accordance with this article for any of the following: 1. Actions in good faith based on the results of a positive drug test or alcohol impairment test. [etc.]”</p> <p>A.R.S. § 15-513 “Transportation employees; chemical abuse education; drug tests; costs; termination from employment; appeal; definition”</p>



[A.R.S. § 28-9507](#)

“Vehicles for hire; criminal background checks; vehicle safety records; zero-tolerance policy; drug and alcohol use by driver; passenger complaints”

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Arkansas

Medical Marijuana Laws	Arkansas Medical Marijuana Amendment of 2016, Ark. Const. amend. 98, §§ 1 to 25 Ark. Code §§ 20-56-301 to 20-56-304
Workplace Medical Marijuana Laws & Cases	Ark. Const. amend. 98, § 3(f)(3)(A) “An employer shall not discriminate against an applicant or employee in hiring, termination, or any term or condition of employment, or otherwise penalize an applicant or employee, based upon the applicant's or employee's past or present status as a qualifying patient or designated caregiver.” Ark. Const. amend. 98, § 3(f)(3)(D)(i) “Damages established for an employment discrimination claim based on an applicant's or employee's past or present status as a qualifying patient or designated caregiver in violation of this amendment shall be limited to the damages available for an employment discrimination claim under § 16-123-107(c) of the Arkansas Civil Rights Act of 1993, § 16-123-101 et seq., including the statutory limits provided under § 16-123-107(c)(2)(A)(i)-(v).” Ark. Const. amend. 98, § 6(b) “This amendment does not require: [...] (2) An employer to accommodate the ingestion of marijuana in a workplace or an employee working while under the influence of marijuana;”
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.
Workplace Drug Testing Laws	Ark. Code Ann. § 11-3-203(a)(1) “It is unlawful for any person, partnership, association, or corporation, either for himself or herself or in a representative or fiduciary capacity, to require any employee or applicant for employment, as a condition of employment or continued employment, to submit to or take a physical, medical examination, or drug test unless the physical, medical examination, or drug test is provided at no cost to the employee or applicant for employment



and unless a true and correct copy, either original or duplicate original, of the examiner's report of the physical, medical examination, or drug test is furnished free of charge to the applicant or employee upon a written request of the applicant or employee.”

Drug Free Workplaces, [Ark. Code Ann. §§ 11-14-101 to 11-14-112](#)

[Ark. Code Ann. § 20-77-128](#)

“A caregiver shall submit to a drug screen that tests for the use of illegal drugs through a program established by the Department of Human Services.”

Commercial Driver Alcohol and Drug Testing Act, [Ark. Code Ann. §§ 27-23-201 to 27-23-211](#)

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California

Medical Marijuana Laws	Cal. Health & Safety Code §§ 11362.5 and 11362.7 to 11362.83
Workplace Medical Marijuana Laws & Cases	<p>Ross v. RagingWire Telecommunications, Inc., 42 Cal. 4th 920, 70 Cal. Rptr. 3d 382, 174 P.3d 200 (Cal. 2008) “Nothing in the text or history of the Compassionate Use Act suggests the voters intended the measure to address the respective rights and duties of employers and employees. Under California law, an employer may require preemployment drug tests and take illegal drug use into consideration in making employment decisions.”</p> <p>Shepherd v. Kohl's Dep't Stores, Inc., 2016 WL 4126705, (E.D. Cal. 2016) “To the extent plaintiff attempts to argue around the holding in RagingWire by asserting his FEHA claim is based on defendant’s failure to follow its own policies, the court is unpersuaded. Plaintiff presents no authority, and this court has found none, suggesting a cognizable FEHA claim can be based simply on an employer’s failure to abide by policies not required by FEHA. While the failure to abide by its own policies may be a breach of an implied-in-fact contract, for the reasons discussed below, refusing to accommodate an employee’s marijuana usage does not violate FEHA.”</p>
Recreational Marijuana Laws	Cal. Health & Safety Code §§ 11362.1 to 11362.45 ; Cal. Bus. and Prof. Code §§ 26000 to 26211
Workplace Recreational Marijuana Laws & Cases	<p>Cal. Health & Safety Code § 11362.45 “Section 11362.1 does not amend, repeal, affect, restrict, or preempt: ... (f) The rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace, or affect the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees, or prevent employers from complying with state or federal law.”</p>
Workplace Drug Testing Laws	<p>Loder v. City of Glendale, 14 Cal. 4th 846, 59 Cal. Rptr. 2d 696, 927 P.2d 1200 “As we shall explain, we conclude that the across-the-board drug testing program here at issue is invalid as applied to current employees who have been conditionally approved for promotion, but is valid as applied to job applicants.”</p> <p>Wilkinson v. Times Mirror Corp., 215 Cal. App. 3d 1034, 1037, 264 Cal. Rptr. 194, 196 (Ct. App. 1989) “The principal question in this appeal is whether a private employer violates that constitutional provision by asking</p>

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all job applicants to consent to a urinalysis which tests for alcohol and other drugs as a condition of an offer of employment. The applicants have notice of the drug-testing policy, and the sample is collected during a regular preemployment physical examination conducted by medical personnel, under conditions designed to minimize the intrusiveness of the procedure and restrict access to the test results. We have concluded that under all these circumstances, the employer's preemployment drug-testing policy is not unconstitutional.”

[Kraslawsky v. Upper Deck Co., 56 Cal. App. 4th 179, 65 Cal. Rptr. 2d 297 \(1997\)](#)

“We are persuaded the issue of reasonable cause is relevant to determining the constitutionality of Upper Deck's drug test demand. A contrary holding would essentially give an employer with a constitutionally valid drug testing policy a free license to conduct random testing, regardless of the circumstances. This result would be inconsistent with the privacy rights protected by our state constitution.”

[Smith v. Fresno Irrigation Dist., 72 Cal. App. 4th 147, 84 Cal. Rptr. 2d 775 \(1999\)](#)

“Although advance notice of drug testing does not automatically defeat an employee's argument that the testing is unconstitutional, it does decrease his expectation of privacy. (Piroglu v. Coleman (D.C.Cir.1994) 306 App.D.C. 392, 25 F.3d 1098, 1103.) Advance notice of drug testing minimizes the program's intrusion on privacy interests. (Treasury Employees v. Von Raab, supra, 489 U.S. at p. 672, fn. 2, 109 S.Ct. 1384.) The element of surprise inherent in a random testing program has been found minimized when advance notice of the implementation of the policy was given to the affected employee. (Intern. Broth. of Teamsters v. Dept. of Transp., supra, 932 F.2d at p. 1303.)”

Cal. Veh. Code §§ [34520](#) and [34623](#); Cal. Civ. Code § [3333.7](#) (“Driver of a commercial motor vehicle”)

See “California Drug-Free Workplace Act of 1990,” Cal. Gov. Code § [8355](#).

Cal. Code Regs. tit. 2, §§ [213 to 213.6](#) and [599.960 to 599.966](#). (State Personnel Board – “Preemployment Testing for Drug Usage”)



Colorado

Medical Marijuana Laws	<p>Colo. Const. Art. XVIII, Section 14</p> <p>Colorado Medical Marijuana Code, C.R.S. § 44-11-101 et seq.</p>
Workplace Medical Marijuana Laws & Cases	<p>Colo. Const. Art. XVIII, Section 14(10)(b)</p> <p>“Nothing in this section shall require any employer to accommodate the medical use of marijuana in any work place.”</p> <p>Coats v. Dish Network, 350 P.3d 849 (Colo. 2015)</p> <p>“The term “lawful” as it is used in section 24–34–402.5 is not restricted in any way... Therefore, an activity such as medical marijuana use that is unlawful under federal law is not a “lawful” activity under section 24–34–402.5.”</p> <p>Steele v. Stallion Rockies Ltd, 106 F. Supp. 3d 1205, 1219 (D. Colo. 2015)</p> <p>"The facts as pled in the Complaint suggest that Plaintiff was terminated from his employment for his use of medical marijuana or his adversarial relationship with Bart Steele. Although Plaintiff alleges that his relationship with Stallion was strained due to his disability and need for accommodations, he fails to allege a single, specific example of how his medical condition, or any accommodation therefore, led to his termination... Therefore, Robert Stallion's Third Claim for Relief for violation of the American Disabilities Act should be dismissed."</p> <p>Curry v. MillerCoors, Inc., No. 12-cv-02471, 2013 WL 4494307 (D. Colo. Aug. 21, 2013)</p> <p>“Mr. Curry, per MillerCoors's standard policies, took a drug screen that tested positive for cannabinoids. Under established Colorado law, discharging an employee under these circumstances is lawful, regardless of whether the employee consumed marijuana on a medical recommendation, at home or off work.”</p> <p>Beinor v. Indus. Claim Appeals Office, 262 P.3d 970, 977 (Colo. App. 2011)</p> <p>“Claimant's status as a ‘sweeper and panner’ who was not required to alert his supervisor of his marijuana use did not render his termination inappropriate under employer's zero-tolerance drug policy.”</p>
Recreational Marijuana Laws	<p>Colo. Const. Art. XVIII, Section 16</p> <p>C.R.S. 18-18-433</p>

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	Colorado Retail Marijuana Code, C.R.S. § 44-12-101 et seq.
Workplace Recreational Marijuana Laws & Cases	Colo. Const. Art. XVIII, Section 16(6)(a) “Nothing in this section is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees.”
Workplace Drug Testing Laws	No statutes found. See cases under “Workplace Medical Marijuana Laws & Cases”

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Connecticut

Medical Marijuana Laws	Conn. Gen. Stat. § 21a-408p, et seq.
Workplace Medical Marijuana Laws & Cases	<p>Conn. Gen. Stat. § 21a-408p(b)</p> <p>“Unless required by federal law or required to obtain federal funding: (3) 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 or primary caregiver under sections 21a-408 to 21a-408n, inclusive. Nothing in this subdivision shall restrict an employer's ability to prohibit the use of intoxicating substances during work hours or restrict an employer's ability to discipline an employee for being under the influence of intoxicating substances during work hours.”</p> <p>Noffsinger v. SSC Niantic Operating Company LLC, 273 F. Supp. 3d 326, 330 (D. Conn. 2017)</p> <p>“I must decide if federal law precludes enforcement of a Connecticut law that prohibits employers from firing or refusing to hire someone who uses marijuana for medicinal purposes. I conclude that the answer to that question is ‘no’ and that a plaintiff who uses marijuana for medicinal purposes in compliance with Connecticut law may maintain a cause of action against an employer who refuses to employ her for this reason.”</p> <p><i>Bulerin v. City of Bridgeport</i> (Conn. Sup. Ct. Mar. 8, 2019)</p> <p>“The text of Section 21a-408p(b)(3) expressly confers a right on "qualifying patients" to be free from employment discrimination, and it is illogical not to have an enforcement mechanism.”</p>
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.
Workplace Drug Testing Laws	<p>Conn. Gen. Stat. Ann. §§ 31-51t to 31-51aa</p> <p>Conn. Gen. Stat. Ann. § 31-51u(a)</p> <p>“No employer may determine an employee's eligibility for promotion, additional compensation, transfer,</p>

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termination, disciplinary or other adverse personnel action solely on the basis of a positive urinalysis drug test result unless (1) the employer has given the employee a urinalysis drug test, utilizing a reliable methodology, which produced a positive result and (2) such positive test result was confirmed by a second urinalysis drug test...”

[Conn. Gen. Stat. Ann. § 31-51v](#)

“No employer may require a prospective employee to submit to a urinalysis drug test as part of the application procedure for employment with such employer unless (1) the prospective employee is informed in writing at the time of application of the employer's intent to conduct such a drug test, (2) such test is conducted in accordance with the requirements of subdivisions (1) and (2) of subsection (a) of section 31-51u and (3) the prospective employee is given a copy of any positive urinalysis drug test result. The results of any such test shall be confidential and shall not be disclosed by the employer or its employees to any person other than any such employee to whom such disclosure is necessary.”

[Imme v. Fed. Express Corp., 193 F. Supp. 2d 519, 524 \(D. Conn. 2002\)](#)

“In enacting § 31–51x, “the Connecticut legislature intended to adopt the Fourth Amendment standard of individualized suspicion in order to protect the privacy interests of employees.”



Delaware

Medical Marijuana Laws	16 Del. Code §§ 4901A, et seq.
Workplace Medical Marijuana Laws & Cases	<p>16 Del. Code § 4905A:</p> <p>“(3) Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations, an employer may not discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon either of the following:</p> <ul style="list-style-type: none"> A. The person's status as a cardholder; or B. A registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment.” <p>16 Del. Code § 4907A</p> <p>“(A) Nothing in this chapter requires:</p> <ul style="list-style-type: none"> (3) An employer to allow the ingestion of marijuana in any workplace or to allow any employee to work while under the influence of marijuana, except that a registered qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana. <p>(B) Nothing in this chapter prohibits an employer from disciplining an employee for ingesting marijuana in the workplace or working while under the influence of marijuana.”</p> <p>Chance v. Kraft Heinz Foods Co., No. CV K18C-01-056 NEP, (Del. Super. Ct. Dec. 17, 2018)</p> <p>“The DMMA does not require employers to participate in an illegal activity (the unauthorized manufacture, dissemination, dispensing or possession of controlled substances) but instead merely prohibits them from discriminating based upon medical marijuana use.” Under Section 4905A(a)(3), no remedy other than a private right of action is available to cardholders and qualifying marijuana patients terminated or discharged from employment for failing drug tests...Therefore, this Court finds that the language of Section 4905A(a)(3) creates an implied private right of action.”</p>

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	<p><u>Breech v. Town of Ocean View, C.A. No.: S15A-12-001 RFS (Del. Super. Ct. Aug. 15, 2016)</u></p> <p>“Ms. Breech's argument that, had the process of becoming a cardholder been faster, her marijuana use would have been legal is without merit. Preliminarily, <u>16 Del. C. § 4907A(b)</u> states, ‘Nothing in this chapter prohibits an employer from disciplining an employee for ingesting marijuana in the workplace or working while under the influence of marijuana.’”</p>
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.
Workplace Drug Testing Laws	<p>No statutes found.</p> <p>See cases under “Workplace Medical Marijuana Laws & Cases”</p>



District of Columbia

Medical Marijuana Laws	D.C. Code §§ 7-1671.01 to 7-1671.13.
Workplace Medical Marijuana Laws & Cases	<p>D.C. Code § 7-1671.03(d)</p> <p>“Nothing in this chapter permits a person to:</p> <ul style="list-style-type: none"> (1) Undertake any task under the influence of medical marijuana when doing so would constitute negligence or professional malpractice; or (2) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of medical marijuana.” <p>Coles v. Harris Teeter, LLC, 217 F. Supp. 3d 185, 188 (D.D.C. 2016)</p> <p>"District law does not 'provide a clear mandate of public policy' that employers must accommodate such legal marijuana use by their employees."</p>
Recreational Marijuana Laws	D.C. Code § 48-904.01
Workplace Recreational Marijuana Laws & Cases	<p>D.C. Code § 48-904.01(1C)</p> <p>“Nothing in this subsection shall be construed to require any District government agency or office, or any employer, to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace or to affect the ability of any such agency, office, or employer to establish and enforce policies restricting the use of marijuana by employees.”</p>
Workplace Drug Testing Laws	<p>D.C. Code § 32-931(a)</p> <p>“An employer may only test a prospective employee for marijuana use after a conditional offer of employment has been extended, unless otherwise required by law.”</p> <p>Coles v. Harris Teeter, LLC, 217 F. Supp. 3d 185, 188 (D.D.C. 2016)</p> <p>"In fact, the District’s Prohibition of Pre-Employment Marijuana Testing Act seems to leave room for employers to remove workers who fail a drug test for marijuana use or violate workplace drug-prevention policies."</p>



Florida

Medical Marijuana Laws	<p>Fla. Const. art. X, § 29</p> <p>Fla. Stat. § 381.986</p>
Workplace Medical Marijuana Laws & Cases	<p>Fla. Const. art. X, § 29(c)(6) “Nothing in this section shall require any accommodation of any on-site medical use of marijuana in any correctional institution or detention facility or place of education or employment, or of smoking medical marijuana in any public place.”</p> <p>Fla. Stat. § 381.986(1)(j)(5)(c) “Medical use’... does not include... Use or administration of marijuana in the following locations... In a qualified patient’s place of employment, except when permitted by his or her employer.”</p> <p>Fla. Stat. § 381.986(15) “This section does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy. This section does not require an employer to accommodate the medical use of marijuana in any workplace or any employee working while under the influence of marijuana. This section does not create a cause of action against an employer for wrongful discharge or discrimination. Marijuana, as defined in this section, is not reimbursable under chapter 440.”</p> <p>Jacobson v. City of W. Palm Beach, No. 17-12716, 2018 WL 4355863 (11th Cir. Sept. 12, 2018) “District court concluded that Mr. Jacobson’s discrimination and retaliation claims failed because, although he established prima facie cases for both claims, he did not present sufficient evidence for either claim to show that the City’s legitimate non-discriminatory reason for terminating him was pretext. We affirm... he chose to self-medicate with marijuana between 1999 and 2012; however, he never used marijuana while on duty.”</p>
Recreational Marijuana Laws	<p>No legalization of recreational marijuana found.</p>
Workplace Recreational	<p>No legalization of recreational marijuana found.</p>

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Marijuana Laws & Cases	
Workplace Drug Testing Laws	<p>Fla. Stat. § 440.102(2) “An employer may test an employee or job applicant for any drug described in paragraph (1)(c)... However, an employer does not have a legal duty under this section to request an employee or job applicant to undergo drug testing...”</p> <p>Fla. Stat. § 112.0455 “This section is intended to: (a) Promote the goal of drug-free workplaces within government through fair and reasonable drug-testing methods...”</p>

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Hawaii

Medical Marijuana Laws	<p>Haw. Rev. Stat. §§ 329-121 to 329-128</p> <p>Haw. Code R. §§ 11-160-1 to 11-160-56</p>
Workplace Medical Marijuana Laws & Cases	<p>Haw. Rev. Stat. § 329-122</p> <p>“(e) The authorization for the medical use of cannabis in this section shall not apply to:</p> <p style="padding-left: 40px;">(2) The medical use of cannabis:</p> <p style="padding-left: 80px;">(B) In the workplace of one's employment.”</p> <p>Kamakeeaina v. Armstrong Produce, Ltd., No. 18-CV-00480, 2019 WL 1320032, at *6 (D. Haw. Mar. 22, 2019)</p> <p>“Armstrong argues that any reasonable accommodation claim fails because, even if Kamakeeaina was entitled to coverage under the ADA, using marijuana is not a reasonable accommodation. The Court agrees. This is because the ADA clearly provides that a person cannot be a qualified individual with a disability if they are engaging in the use of illegal drugs and only qualified individuals are entitled to reasonable accommodations. <i>See id.</i> §§ 12114(a), 12112(a).”</p> <p>Lambdin v. Marriott Resorts Hosp. Corp., No. 16-cv-00004, 2017 WL 4079718, at *8–9 (D. Haw. Sept. 14, 2017)</p> <p>“Plaintiff claims that he failed the post-accident drug test because he smoked marijuana on February 12, 2014. Plaintiff could not have been approved for medical marijuana use twelve days before his application was received by the Narcotics Enforcement Division. Plaintiff fails to show that he was lawfully using marijuana pursuant to Hawaii State Law... Defendant stated the cause for termination was because Defendant prohibits employees from being under the influence of drugs at work, including marijuana... Defendant has satisfied its burden of showing a legitimate, non-discriminatory reason for terminating Plaintiff's employment.”</p>
Recreational Marijuana Laws	<p>No legalization of recreational marijuana found.</p>
Workplace Recreational Marijuana Laws & Cases	<p>No legalization of recreational marijuana found.</p>



Workplace Drug Testing Laws	<p>Haw. Rev. Stat. § 329B-5(a) “Prior to the collection of any sample for substance abuse testing, the individual to be tested shall receive a written statement of the specific substances to be tested for and a statement that over-the-counter medications or prescribed drugs may result in a positive test result.”</p> <p>See Haw. Rev. Stat. §§ 329B-1 to 329B-8; Haw. Code R. §§ 11-113-1 to 11-113-34 for further information.</p> <p>See also Lambdin v. Marriott Resorts Hosp. Corp., No. 16-cv-00004, 2017 WL 4079718, at *8–9 (D. Haw. Sept. 14, 2017)</p>
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Illinois

Medical Marijuana Laws	Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/1 to 410 ILCS 130/999
Workplace Medical Marijuana Laws & Cases	<p>410 ILCS 130/40(a)(1) “No school, employer, or landlord may refuse to enroll or lease to, or otherwise penalize, a person solely for his or her status as a registered qualifying patient or a registered designated caregiver, unless failing to do so would put the school, employer, or landlord in violation of federal law or unless failing to do so would cause it to lose a monetary or licensing-related benefit under federal law or rules. This does not prevent a landlord from prohibiting the smoking of cannabis on the premises.”</p> <p>410 ILCS 130/40(d) “Nothing in this Act may be construed to require a government medical assistance program, employer, property and casualty insurer, or private health insurer to reimburse a person for costs associated with the medical use of cannabis.”)</p> <p>410 ILCS 130/50 “(a) Nothing in this Act shall prohibit an employer from adopting reasonable regulations concerning the consumption, storage, or timekeeping requirements for qualifying patients related to the use of medical cannabis.</p> <p>(b) Nothing in this Act shall prohibit an employer from enforcing a policy concerning drug testing, zero-tolerance, or a drug free workplace provided the policy is applied in a nondiscriminatory manner.</p> <p>(c) Nothing in this Act shall limit an employer from disciplining a registered qualifying patient for violating a workplace drug policy.</p> <p>(d) Nothing in this Act shall limit an employer's ability to discipline an employee for failing a drug test if failing to do so would put the employer in violation of federal law or cause it to lose a federal contract or funding.</p> <p>(e) Nothing in this Act shall be construed to create a defense for a third party who fails a drug test.</p>

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	<p>(f) An employer may consider a registered qualifying patient to be impaired when he or she manifests specific, articulable symptoms while working that decrease or lessen his or her performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, negligence or carelessness in operating equipment or machinery, disregard for the safety of the employee or others, or involvement in an accident that results in serious damage to equipment or property, disruption of a production or manufacturing process, or carelessness that results in any injury to the employee or others. If an employer elects to discipline a qualifying patient under this subsection, it must afford the employee a reasonable opportunity to contest the basis of the determination.</p> <p>(g) Nothing in this Act shall be construed to create or imply a cause of action for any person against an employer for: (1) actions based on the employer's good faith belief that a registered qualifying patient used or possessed cannabis while on the employer's premises or during the hours of employment; (2) actions based on the employer's good faith belief that a registered qualifying patient was impaired while working on the employer's premises during the hours of employment; (3) injury or loss to a third party if the employer neither knew nor had reason to know that the employee was impaired.</p> <p>(h) Nothing in this Act shall be construed to interfere with any federal restrictions on employment including but not limited to the United States Department of Transportation regulation 49 CFR 40.151(e)."</p>
<p>Recreational Marijuana Laws</p>	<p>Cannabis Regulation and Tax Act, (410 ILCS 705)</p>
<p>Workplace Recreational Marijuana Laws & Cases</p>	<p>410 ILCS 705/1050</p> <p>"Sec. 10-50. Employment; employer liability.</p> <p>(a) Nothing in this Act shall prohibit an employer from adopting reasonable zero tolerance or drug free workplace policies, or employment policies concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace or while on call provided that the policy is applied in a nondiscriminatory manner.</p> <p>(b) Nothing in this Act shall require an employer to permit an employee to be under the influence of or use cannabis in the employer's workplace or while performing the employee's job duties or while on call.</p>



	<p>(c) Nothing in this Act shall limit or prevent an employer from disciplining an employee or terminating employment of an employee for violating an employer's employment policies or workplace drug policy.</p> <p>(d) An employer may consider an employee to be impaired or under the influence of cannabis if the employer has a good faith belief that an employee manifests specific, articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operating equipment or machinery; disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property; disruption of a production or manufacturing process; or carelessness that results in any injury to the employee or others. If an employer elects to discipline an employee on the basis that the employee is under the influence or impaired by cannabis, the employer must afford the employee a reasonable opportunity to contest the basis of the determination.</p> <p>(e) Nothing in this Act shall be construed to create or imply a cause of action for any person against an employer for:</p> <ul style="list-style-type: none"> (1) actions, including but not limited to subjecting an employee or applicant to reasonable drug and alcohol testing under the employer's workplace drug policy, including an employee's refusal to be tested or to cooperate in testing procedures or disciplining or termination of employment, based on the employer's good faith belief that an employee used or possessed cannabis in the employer's workplace or while performing the employee's job duties or while on call in violation of the employer's employment policies; (2) actions, including discipline or termination of employment, based on the employer's good faith belief that an employee was impaired as a result of the use of cannabis, or under the influence of cannabis, while at the employer's workplace or while performing the employee's job duties or while on call in violation of the employer's workplace drug policy; or (3) injury, loss, or liability to a third party if the employer neither knew nor had reason to know that the employee was impaired."
<p>Workplace Drug Testing Laws</p>	<p>410 ILCS 130/50(b) through (e) (see "Workplace Medical Marijuana Laws & Cases")</p>

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See also [30 ILCS 580/1 through 580/10](#) (“Drug Free Workplace Act”)

[820 ILCS 55/5](#) (“Right to Privacy in the Workplace Act”)

“Sec. 5. Discrimination for use of lawful products prohibited.

(a) Except as otherwise specifically provided by law, including Section 10-50 of the Cannabis Regulation and Tax Act, and except as provided in subsections (b) and (c) of this Section, it shall be unlawful for an employer to refuse to hire or to discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual uses lawful products off the premises of the employer during nonworking and non-call hours. As used in this Section, "lawful products" means products that are legal under state law. For purposes of this Section, an employee is deemed on-call when the employee is scheduled with at least 24 hours' notice by his or her employer to be on standby or otherwise responsible for performing tasks related to his or her employment either at the employer's premises or other previously designated location by his or her employer or supervisor to perform a work-related task.”

[Sharp v. Blackmon, 2016 IL App \(5th\) 150204-U](#)

"The decision of defendant Board of Fire and Police Commissioners to terminate the plaintiff fireman's employment was upheld on administrative review where he deliberately disobeyed the Fire Chief's direct order to submit to drug testing based upon reasonable suspicion that he used drugs where the Chief received information from two law enforcement agents in the State of Texas that he had been stopped there and arrested for possession of cannabis..."



Iowa

Medical Marijuana Laws	<p>Medical Cannabidiol Act, Iowa Code §§ 124E.1 to 124E.17</p> <p>(Note: “Medical cannabidiol” means any pharmaceutical grade cannabinoid found in the plant Cannabis sativa L. or Cannabis indica or any other preparation thereof that has a tetrahydrocannabinol level of no more than three percent and that is delivered in a form recommended by the medical cannabidiol board, approved by the board of medicine, and adopted by the department pursuant to rule.” Iowa Code § 124E.2)</p>
Workplace Medical Marijuana Laws & Cases	<p>No workplace-specific provisions or cases found.</p>
Recreational Marijuana Laws	<p>No legalization of recreational marijuana found.</p>
Workplace Recreational Marijuana Laws & Cases	<p>No legalization of recreational marijuana found.</p>
Workplace Drug Testing Laws	<p>Iowa Code § 730.5</p> <p>“To the extent provided in subsection 8, an employer may test employees and prospective employees for the presence of drugs or alcohol as a condition of continued employment or hiring. An employer shall adhere to the requirements of this section concerning the conduct of such testing and the use and disposition of the results of such testing...”</p>



Louisiana

Medical Marijuana Laws	La. R.S. § 40:1046
Workplace Medical Marijuana Laws & Cases	La. R.S. § 40:1046(J) “Notwithstanding any other provision of law to the contrary, employers and their worker's compensation insurers shall not be obliged or ordered to pay for medical marijuana in claims arising under Title 23 of the Louisiana Revised Statutes of 1950, the Louisiana Workers' Compensation Law.”
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.
Workplace Drug Testing Laws	La. R.S. § 23:897 ; La. R.S. § 49:1001, et seq.

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Maine

Medical Marijuana Laws	Maine Medical Use of Marijuana Act 22 M.R.S.A. §§ 2421 to 2430-H
Workplace Medical Marijuana Laws & Cases	<p>22 M.R.S.A. § 2430-C</p> <p>“1. Rights of persons or entities acting pursuant to this chapter. A person whose conduct is authorized under this chapter may not be denied any right or privilege or be subjected to arrest, prosecution, penalty or disciplinary action, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for lawfully engaging in conduct involving the medical use of marijuana authorized under this chapter.</p> <p>“3. School, employer or landlord may not discriminate. A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person's status as a qualifying patient or a caregiver unless failing to do so would put the school, employer or landlord in violation of federal law or cause it to lose a federal contract or funding. This subsection does not prohibit a restriction on the administration or cultivation of marijuana on premises when that administration or cultivation would be inconsistent with the general use of the premises. A landlord or business owner may prohibit the smoking of marijuana for medical purposes on the premises of the landlord or business if the landlord or business owner prohibits all smoking on the premises and posts notice to that effect on the premises.”</p> <p>22 M.R.S.A § 2426</p> <p>“1. Limitations. This chapter does not permit any person to:</p> <ul style="list-style-type: none"> A. Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice or would otherwise violate any professional standard. <p>“2. Construction. This chapter may not be construed to require:</p> <ul style="list-style-type: none"> A. A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or B. An employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana.”

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	<p><u><i>Bourgoin v. Twin Rivers Paper Co., LLC, (Me., Jun. 14, 2018)</i></u></p> <p>“After sustaining a work-related injury, Gaetan H. Bourgoin was issued a certification to use medical marijuana as a result of chronic back pain. He successfully petitioned the Workers' Compensation Board for an order requiring his former employer, Twin Rivers Paper Company, LLC, to pay for the medical marijuana. On this appeal from the decision of the Appellate Division affirming that award, we are called upon for the first time to consider the relationship between the federal Controlled Substances Act (CSA) and the Maine Medical Use of Marijuana Act (MMUMA). We conclude that in the narrow circumstances of this case—where an employer is subject to an order that would require it to subsidize an employee's acquisition of medical marijuana—there is a positive conflict between federal and state law, and as a result, the CSA preempts the MMUMA as applied here. See 21 U.S.C.S. § 903 (LEXIS through Pub. L. No. 115–181). We therefore vacate the decision of the Appellate Division.”</p> <p><u><i>Bouchard v. General Electric Company, Not Reported in Fed. Supp. (2015)</i></u></p> <p>“Between August of 2011 and September of 2012, Mr. Bouchard was prescribed a variety of medications for his pain, including atenolol, hydrochlorothiazide, Vicodin, oxycodone, Avinza, morphine, and medical marijuana. Mr. Bouchard used some combination of narcotic pain medication and marijuana on a daily basis between August 2011 and January 2015.”</p> <p>“I cannot say, as a matter of law, that GE reasonably accommodated Mr. Bouchard where there is evidence that it would not discuss accommodation until he produced a medically-backed date-certain for a medication-free return to work.”</p>
<p>Recreational Marijuana Laws</p>	<p><u>28-B M.R.S.A. §§ 101 to 1504</u></p> <p>“Chapter 1: Marijuana Legalization Act §101 - §1102</p> <p>“Chapter 2: Personal Adult Use of Marijuana and Marijuana Products; Home Cultivation of Marijuana for Persona Adult Use §1501 - §1504.”</p>
<p>Workplace Recreational Marijuana Laws & Cases</p>	<p><u>28-B M.R.S.A. § 112. Employment policies</u></p> <p>“Except as otherwise provided in the Maine Medical Use of Marijuana Act, an employer:</p> <ol style="list-style-type: none"> 1. Marijuana in workplace. <p>Is not required to permit or accommodate the use, consumption, possession, trade, display, transportation, sale or cultivation of marijuana or marijuana products in the workplace;</p>



	<p>2. Workplace policies regarding marijuana use. May enact and enforce workplace policies restricting the use of marijuana and marijuana products by employees in the workplace or while otherwise engaged in activities within the course and scope of employment; and</p> <p>3. Discipline of employees. May discipline employees who are under the influence of marijuana in the workplace or while otherwise engaged in activities within the course and scope of employment in accordance with the employer's workplace policies regarding the use of marijuana and marijuana products by employees.”</p>
<p>Workplace Drug Testing Laws</p>	<p>26 M.R.S.A. §§ 681 to 689 Substance Use Testing “§ 681</p> <p>1. Purpose. This subchapter is intended to:</p> <ul style="list-style-type: none"> A. Protect the privacy rights of individual employees in the State from undue invasion by employers through the use of substance use tests while allowing the use of tests when the employer has a compelling reason to administer a test; B. Ensure that, when substance use tests are used, proper test procedures are employed to protect the privacy rights of employees and applicants and to achieve reliable and accurate results; C. Ensure that an employee with substance use disorder receives an opportunity for rehabilitation and treatment of the disease and returns to work as quickly as possible; and D. Eliminate drug use in the workplace.” <p>Barrera v. Town of Brownville, 139 F. Supp. 2d 136 (D. Me. 2001) “Construing the facts in the light most favorable to Plaintiff, the Court finds that there is ample evidence upon which a reasonable jury could find that Defendants terminated Barrera without a ‘confirmed positive result’ in violation of Maine statute. See 26 M.R.S.A. § 685(2).”</p>



Maryland

Medical Marijuana Laws	Md. Code Ann. Health-Gen. §§ 13-3301 to 13-3316.
Workplace Medical Marijuana Laws & Cases	<p>Md. Code Ann., Health-Gen. § 13-3313(a)</p> <p>“(a) Any of the following persons acting in accordance with the provisions of this subtitle may not be subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the medical use of or possession of medical cannabis.”</p>
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.
Workplace Drug Testing Laws	<p>Md. Code Ann., Health-Gen. § 17-214. Controlled substance testing by employer</p> <p>“(h) This section applies to job-related alcohol and controlled dangerous substance testing of any person, including preemployment applicants, employees, and contractors.”</p> <p>Bond v. Dep't Of Pub. Safety And Corr. Servs., 161 Md. App. 112, 867 A.2d 346 (2005)</p> <p>“The appellant, Gertrude Bond, tested positive for using marijuana and was fired from her secretarial job with the Department of Public Safety and Correctional Services (DPSCS). She challenged her termination in an intra-agency appeal, and an administrative law judge (ALJ) affirmed the DPSCS's decision. When appellant sought judicial review, a Baltimore City Circuit Court judge affirmed the ALJ's decision.”</p>



Massachusetts

Medical Marijuana Laws	Mass. Gen. Laws c. 94I §§ 1 to 8
Workplace Medical Marijuana Laws & Cases	<p>Barbuto v. Advantage Sales and Marketing, LLC, 78 N.E.3d 37, 45 (Mass. 2017) “Where, in the opinion of the employee’s physician, medical marijuana is the most effective medication for the employee’s debilitating medical condition, and where any alternative medication whose use would be permitted by the employer’s drug policy would be less effective, an exception to an employer’s drug policy to permit its use is a facially reasonable accommodation.”</p> <p>Melo v. City of Somerville, No. CV 18-10786-RGS, 2019 WL 1230365, at *4, n. 14 (D. Mass. Mar. 15, 2019) “Melo avers that his use of medical marijuana is a reasonable accommodation...This averment fails for a few reasons. First, Melo never requested such an accommodation... Second, although Dr. Sutcliffe disagreed, Dr. Rielly and two other doctors determined that Melo could not perform the essential functions of a police officer because of his monocular vision, not because of his marijuana use. Third, medical marijuana would not remedy Melo’s eyesight, only his chronic pain. Thus, even with marijuana, he would be unable to engage in pursuit driving, an essential function.”</p>
Recreational Marijuana Laws	Mass. Gen. Laws c. 94G §§ 1 to 21
Workplace Recreational Marijuana Laws & Cases	<p>Mass. Gen. Laws c. 94G § 2(e) “This chapter shall not require an employer to permit or accommodate conduct otherwise allowed by this chapter in the workplace and shall not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees.”</p>
Workplace Drug Testing Laws	<p>Folmsbee v. Tech Tool Grinding & Supply, Inc., 417 Mass. 388, 394, 630 N.E.2d 586, 590 (1994) “In light of the nature of Tech Tool’s business, the evidence of employee drug use, and the procedural safeguards to guarantee privacy employed by the medical center, the judge correctly determined that the drug testing policy was reasonable. Balancing the competing interests, we conclude that Tech Tool’s drug testing policy did not violate G.L. c. 214, § 1B.”</p> <p>Webster v. Motorola, Inc., 418 Mass. 425, 432–33, 637 N.E.2d 203, 207–08 (1994)</p>

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“With respect to Webster, Motorola Communications's and Motorola's legitimate business interests justify their random drug testing program. The defendants, as do all businesses, have a general interest in protecting the safety of their employees and in providing them a drug-free environment in which to work. This interest alone, however, is not sufficient. Motorola Communications, and Motorola had the added interest in ensuring that Webster not operate their motor vehicle while intoxicated by drugs; this interest included protecting Webster's safety and the safety of others, preventing corporate liability, and protecting corporate property. In the circumstances, the defendants' legitimate business interests are sufficient to outweigh Webster's privacy interests.

“With respect to Joyce, the interests of his employer, Codex, and Motorola are not sufficient to outweigh his privacy interests. Although his job duties are such that errors could possibly result in harm to human health and safety or to national security, the trial judge rightly determined that “the nexus between his job duties and the harms feared is attenuated.” Joyce primarily is an editor of technical texts; he is not a principal writer. His work is checked by others before release. In fact, the judge found that Motorola conceded that “it is unable to predict whether any of the manuals or updates which Mr. Joyce is editing ... are likely to affect national security or human health and safety.”



Michigan

Medical Marijuana Laws	<p>Michigan Medical Marihuana Act, Mich. Comp. Laws §§ 333.26421 to 333.26430</p> <p>Mich. Admin. Code R. §§ 333.101 to 333.133</p>
Workplace Medical Marijuana Laws & Cases	<p>Mich. Comp. Laws § 333.26427(c)(2)</p> <p>“Nothing in this act shall be construed to require any of the following: ... (2) An employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.”</p> <p>Cacias v. Wal-Mart Stores, Inc., 695 F.3d 428, 436 (6th Cir. 2012)</p> <p>“The statutory language of the MMMA does not support Plaintiff’s interpretation that the statute provides protection against disciplinary actions by a business, inasmuch as the statute fails to regulate private employment actions.”</p> <p>Braska v. Challenge Mfg. Co., 861 N.W.2d 289, 302-03 (Mich. Ct. App. 2014)</p> <p>“Because there was no evidence to suggest that the positive drug tests were caused by anything other than claimants’ use of medical marijuana in accordance with the terms of the MMMA, the denial of the benefits constituted an improper penalty for the medical use of marijuana under the MMMA.”</p> <p>Eplee v. City of Lansing, Mich. Ct. App., No. 342404 (Feb. 19, 2019)</p> <p>“The plain language of § 4(a) of the MMMA is clear that the statute does not provide for a cause of action in instances such as presented here... The statute does not provide an independent right protecting the medical use of marijuana in all circumstances, nor does it create a protected class for users of medical marijuana.”</p>
Recreational Marijuana Laws	<p>Michigan Regulation and Taxation of Marihuana Act, Mich. Comp. Laws 333.27951 to 333.27967</p>
Workplace Recreational Marijuana Laws & Cases	<p>Mich. Comp. Laws 333.27954(3)</p> <p>“This act does not require an employer to permit or accommodate conduct otherwise allowed by this act in any workplace or on the employer’s property. This act does not prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while under the influence of marihuana. This act does not prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment</p>

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	<p>action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's violation of a workplace drug policy or because that person was working while under the influence of marihuana.”</p>
<p>Workplace Drug Testing Laws</p>	<p>Mich. Comp. Laws § 37.1211 “A person may, under this article, do 1 or more of the following: (a) Establish employment policies, programs, procedures, or work rules regarding the use of alcoholic liquor or the illegal use of drugs...”</p> <p>Mich. Comp. Laws § 421.29(1)(m) “Except as provided in subsection (5), an individual is disqualified from receiving benefits if he or she: (m) Was discharged for illegally ingesting, injecting, inhaling, or possessing a controlled substance on the premises of the employer; refusing to submit to a drug test that was required to be administered in a nondiscriminatory manner; or testing positive on a drug test, if the test was administered in a nondiscriminatory manner. If the worker disputes the result of the testing, and if a generally accepted confirmatory test has not been administered on the same sample previously tested, then a generally accepted confirmatory test shall be administered on that sample. If the confirmatory test also indicates a positive result for the presence of a controlled substance, the worker who is discharged as a result of the test result will be disqualified under this subdivision. A report by a drug testing facility showing a positive result for the presence of a controlled substance is conclusive unless there is substantial evidence to the contrary. As used in this subdivision and subdivision (e): (i) “Controlled substance” means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104. (ii) “Drug test” means a test designed to detect the illegal use of a controlled substance. (iii) “Nondiscriminatory manner” means administered impartially and objectively in accordance with a collective bargaining agreement, rule, policy, a verbal or written notice, or a labor-management contract.”</p>



Minnesota

Medical Marijuana Laws	Minn. Stat. Ann Sections 152.22 to 152.37
Workplace Medical Marijuana Laws & Cases	<p>Minn. Stat. Ann. Section 152.32 Subd. 3 (c) and (d)</p> <p>“(c) Unless a failure to do so would violate federal law or regulations or cause an employer to lose a monetary or licensing-related benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon either of the following:</p> <ul style="list-style-type: none"> (1) The person's status as a patient enrolled in the registry program under sections 152.22 to 152.37; or (2) A patient's positive drug test for cannabis components or metabolites, unless the patient used, possessed, or was impaired by medical cannabis on the premises of the place of employment or during the hours of employment. <p>(d) An employee who is required to undergo employer drug testing pursuant to section 181.953 may present verification of enrollment in the patient registry as part of the employee's explanation under section 181.953, subdivision.”</p>
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.
Workplace Drug Testing Laws	<p>M.S.A. §§ 181.950 to 181.957. Drug and Alcohol Testing in the Workplace</p> <p><u>181.951. Authorized Drug and Alcohol Testing</u></p> <p>“Subd. 5. Reasonable suspicion testing. An employer may request or require an employee to undergo drug and alcohol testing if the employer has a reasonable suspicion that the employee:</p> <ul style="list-style-type: none"> (1) Is under the influence of drugs or alcohol; (2) Has violated the employer's written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on the employer's premises or operating

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	<p>the employer's vehicle, machinery, or equipment, provided the work rules are in writing and contained in the employer's written drug and alcohol testing policy;</p> <p>(3) Has sustained a personal injury, as that term is defined in section 176.011, subdivision 16, or has caused another employee to sustain a personal injury; or</p> <p>(4) Has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.”</p>
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Montana

Medical Marijuana Laws	Montana Medical Marijuana Act, Mont. Code Ann. §§ 50-46-301 to 50-46-345
Workplace Medical Marijuana Laws & Cases	<p>Mont. Code Ann. § 50-46-320. Limitations of Act</p> <p>“(4) Nothing in this part may be construed to require:</p> <p style="padding-left: 40px;">(b) An employer to accommodate the use of marijuana by a registered cardholder;</p> <p>“(5) Nothing in this part may be construed to:</p> <p style="padding-left: 40px;">(a) Prohibit an employer from including in any contract a provision prohibiting the use of marijuana for a debilitating medication condition; or</p> <p style="padding-left: 40px;">(b) Permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.”</p> <p>Johnson v. Columbia Falls Aluminum Co., 213 P.3d 789 (Mont. 2009)</p> <p>“Johnson's claims for violations of the MHRA and ADA also failed to state a claim upon which relief could be granted. Johnson essentially claimed that CFAC violated the ADA and MHRA when it failed to accommodate his medical marijuana use by waiving terms of its Drug Testing Policy allowing termination of employees who test positive for marijuana. However, the MMA clearly provides that an employer is not required to accommodate an employee's use of medical marijuana. Section 50-46-205(2)(b), MCA. While Johnson continues to assert his right to receive treatment in the form of medical marijuana, the issue here is whether CFAC had to accommodate medical marijuana use under the MHRA or the ADA. We agree with the District Court in concluding that a failure to accommodate use of medical marijuana does not violate the MHRA or the ADA since an employer is not required to accommodate an employee's use of medical marijuana.”</p>
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.
Workplace Drug Testing Laws	Mont. Code. Ann. §§ 39-2-205 through 39-2-211 Workforce Drug and Alcohol Testing Act

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[Mont. Code. Ann. § 39-2-207 Qualified Testing Program](#)

“A qualified testing program must comply with the following criteria:

(1) Testing must be conducted according to the terms of written policies and procedures that must be adopted by the employer and must be available for review by all employees 60 days before the terms are implemented or changed. Controlled substance and alcohol testing procedures for samples that are covered by 49 CFR, part 40, must conform to 49 CFR, part 40. For samples that are not covered by 49 CFR, part 40, the qualified testing program must contain chain-of-custody and other procedural requirements that are at least as stringent as those contained in 49 CFR, part 40, and the testing methodology must be cleared by the United States food and drug administration.

(2) In addition to imposing appropriate sanctions on an employee for violation of the employer's standards of conduct, an employer may require an employee who tests positive on a test for controlled substances or alcohol to participate in an appropriate drug or alcohol counseling, treatment, or rehabilitation program as a condition of continued employment. An employer may require the employee to submit to periodic followup testing as a condition of the counseling, treatment, or rehabilitation program.”

[Mont. Code. Ann. § 39-2-210 Limitation on Adverse Action](#)

“Except as provided in 50-46-320, no adverse action, including followup testing, may be taken by the employer if the employee presents a reasonable explanation or medical opinion indicating that the original test results were not caused by illegal use of controlled substances or by alcohol consumption. If the employee presents a reasonable explanation or medical opinion, the test results must be removed from the employee's record and destroyed.”



Nevada

Medical Marijuana Laws	NRS 453A.010 to NRS 453A.810
Workplace Medical Marijuana Laws & Cases	<p>NRS 453A.800</p> <p>“The provisions of this chapter do not:</p> <ol style="list-style-type: none"> 2. Require any employer to allow the medical use of marijuana in the workplace. 3. Except as otherwise provided in subsection 4, require an employer to modify the job or working conditions of a person who engages in the medical use of marijuana that are based upon the reasonable business purposes of the employer 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: <ol style="list-style-type: none"> (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.” <p>Las Vegas Club Hotel & Casino, LLC v. State Employment Sec. Div., No. 67725, 2016 WL 2957134 (Nev. May 19, 2016)</p> <p>“Simmons applied for unemployment benefits, which the Las Vegas Club opposed. The Employment Security Division (the ESD) denied Simmons' application, concluding that Simmons was discharged for misconduct under NRS 612.385 for violating the Las Vegas Club's drug and alcohol policy. Simmons appealed, and an evidentiary hearing was held before an administrative tribunal (referee). The referee issued a decision reversing the determination that Simmons' use of medical marijuana was misconduct and concluded that Simmons was eligible for benefits...On appeal, the Las Vegas Club argues that the ESD's conclusion that Simmons' off-site medical marijuana use was not misconduct under NRS 612.385 was arbitrary and capricious because Simmons violated the Las Vegas Club's drug and alcohol policy, and because Simmons failed to seek clarification about his medical marijuana use in violation of the Las Vegas Club's drug and alcohol policy. We disagree. The Las Vegas Club failed to provide the drug and alcohol policy to the ESD. Thus, the content of the policy and whether Simmons' conduct violated the policy are unknown. Accordingly, we affirm the district court's order.”</p>
Recreational Marijuana Laws	NRS 453D.010 to 453D.600 – Regulation and Taxation of Marijuana Act

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<p>Workplace Recreational Marijuana Laws & Cases</p>	<p>NRS 453D.100 “2. The provisions of this chapter do not prohibit: (a) A public or private employer from maintaining, enacting, and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under this chapter;”</p> <p>NRS 613.333 “1. It is an unlawful employment practice for an employer to: (a) Fail or refuse to hire a prospective employee; or (b) Discharge or otherwise discriminate against any employee concerning the employee’s compensation, terms, conditions or privileges of employment, because the employee engages in the lawful use in this state of any product outside the premises of the employer during the employee’s nonworking hours, if that use does not adversely affect the employee’s ability to perform his or her job or the safety of other employees.”</p>
<p>Workplace Drug Testing Laws</p>	<p>No statutes located. See case under “Workplace Medical Marijuana Laws & Cases.”</p>



New Hampshire

Medical Marijuana Laws	Use Of Cannabis For Therapeutic Purposes, N.H. RSA §§ 126-X:1 to 126-X:12
Workplace Medical Marijuana Laws & Cases	<p>N.H. RSA § 126-X:3</p> <p>“III. Nothing in this chapter shall be construed to require: [...]</p> <p>(c) Any accommodation of the therapeutic use of cannabis on the property or premises of any place of employment or on the property or premises of any residential care facility, nursing home, hospital or hospice house, jail, correctional facility, or other type of penal institution where prisoners reside or persons under arrest are detained. This chapter shall in no way limit an employer's ability to discipline an employee for ingesting cannabis in the workplace or for working while under the influence of cannabis.”</p> <p>N.H. RSA § 126-X:4</p> <p>“VI. The department shall provide each applicant and each approved qualifying patient and designated caregiver a statement with the registry identification card explaining current federal law on the possession of cannabis, that possession of a state registry identification card does not protect a person from federal criminal penalties, and that by using cannabis the qualifying patient may be subject to the denial of rights and privileges by federal agencies including, but not limited to, the loss of rights related to employment such as driving a commercial vehicle, the inability to pass a security clearance, and the right to own, possess, or purchase a firearm and/or ammunition. The statement shall be updated based on any relevant changes in federal law.”</p> <p><i>Appeal of Panaggio</i>, No. 2017-0469, --- A.3d ----, 2019 WL 1067945 (N.H. Mar. 7, 2019)</p> <p>“Accordingly, because the board found that Panaggio's use of medical marijuana is reasonable, medically necessary, and causally related to his work injury, we hold that the board erred when it determined that the insurance carrier is prohibited from reimbursing Panaggio for the cost of purchasing medical marijuana.”</p>
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.

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<p>Workplace Drug Testing Laws</p>	<p>N.H. RSA § 106-L:6 (“Police”) N.H. RSA § 151:41 (“Drug-Free Workplace for Licensed Health Care Facilities and Providers”) N.H. RSA § 263:29-b (“Holder of a school bus driver's certificate”) N.H. RSA § 326-B:37 (“Nurse Practice Act”)</p> <p><i>In re Appeal of Transit Union Local 717, 144 N.H. 325, 741 A.2d 66 (1999)</i> “Absent a clearly defined zero-tolerance drug policy, such as the 1996 "zero-tolerance" drug policy adopted after the discharges, no dominant public policy compels termination after a positive drug test. Cf. Exxon Corp., 118 F.3d at 849. Although we agree with the PELRB's determination that the arbitrator's decision violated strong public policy by ordering reinstatement and would constitute an ULP if enforced, that same policy preventing reinstatement does not automatically require termination. We do not hold that termination is inappropriate; we hold only that automatic termination is inappropriate simply because the arbitrator's award violates strong public policy.”</p>
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New Jersey

Medical Marijuana Laws	N.J.S.A. §§ 24:6I-1 to 24:6I-16.
Workplace Medical Marijuana Laws & Cases	<p>N.J.S.A. § 24:6I-14</p> <p>“16. Nothing in this act shall be construed to require a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana, or an employer to accommodate the medical use of marijuana in any workplace.”</p> <p>Wild v. Carriage Funeral Holdings, Inc., (N.J.Super.A.D. Mar. 27, 2019)</p> <p>“So, we reject the essential holding that brings this matter here and conclude that the Compassionate Use Act's refusal to require an employment accommodation for a user does not mean that the Compassionate Use Act has immunized employers from obligations already imposed elsewhere.”</p> <p>Cotto v. Ardagh Glass Packing, Inc., No. 1:18-cv-01037 (D.N.J. Aug. 10, 2018)</p> <p>“Now this matter comes before the Court on Ardagh Glass’s Motion to Dismiss (ECF No. 6) As we find that neither the New Jersey Law against Discrimination nor the New Jersey Compassionate Use Medical Marijuana Act require an employer to waive a drug test as a condition of employment for federally-prohibited substance, Defendant’s Motion to Dismiss is GRANTED.”</p>
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.
Workplace Drug Testing Laws	No statutes found.
	<p>Mollo v. Passaic Valley Sewerage Comm'rs, 406 F. App'x 664 (3d Cir. 2011)</p> <p>“The Court of Appeals, Barry, Circuit Judge, held that subjecting landscaper at publicly-owned wastewater treatment plant to suspicionless, random drug testing pursuant to policy applicable to all facility employees</p>



engaged in “safety sensitive” work did not violate landscaper's rights to be free from unreasonable searches and seizures.”

[*Hennessey v. Coastal Eagle Point Oil Co.*, 129 N.J. 81, 609 A.2d 11 \(1992\)](#)

“We... hold that Coastal Eagle's firing of Hennessey, an at-will employee in a safety-sensitive position, as a result of his failing a random urine test did not violate a clear mandate of public policy.”

[*Jevic v. Coca Cola Bottling Co. of New York*, No. CIV. A. 89-4431, 1990 WL 109851 \(D.N.J. June 6, 1990\)](#)

“This case presents the timely issue of whether a private employer's pre-employment drug testing policy violates either civil or Constitutional law. Because the Court finds nothing offensive in the subject procedure, either to the law or principles of public policy, it will grant defendant's summary judgment motion.”



New Mexico

Medical Marijuana Laws	Lynn and Erin Compassionate Use Act, N.M. Stat. Ann. §§ 26-2B-1 to 26-2B-7
Workplace Medical Marijuana Laws & Cases	<p>N.M. Stat. Ann. § 26-2B-5</p> <p>“A. Participation in a medical use of cannabis program by a qualified patient or primary caregiver does not relieve the qualified patient or primary caregiver from: {...}</p> <p style="padding-left: 40px;">(3) criminal prosecution or civil penalty for possession or use of cannabis: [...]</p> <p style="padding-left: 80px;">(c) in the workplace of the qualified patient's or primary caregiver's employment;”</p> <p>Garcia v. Tractor Supply Co., 154 F. Supp. 3d 1225 (D.N.M. 2016)</p> <p>“But here, Mr. Garcia does not merely seek state-law immunity for his marijuana use. Rather, he seeks the state to affirmatively require Tractor Supply to accommodate his marijuana use. Thus, the Court finds the Oregon cases closer to the fact of this case and more persuasive. To affirmatively require Tractor Supply to accommodate Mr. Garcia's illegal drug use would mandate Tractor Supply to permit the very conduct the CSA proscribes.”</p> <p>Maez v. Riley Indus., 2015-NMCA-049, 347 P.3d 732</p> <p>“Substantial evidence in the record as a whole does not support the WCJ's conclusion that medical marijuana was not reasonable and necessary medical care. We therefore reverse the WCJ's compensation order.”</p> <p>Vialpando v. Ben's Auto. Servs., 2014-NMCA-084, 331 P.3d 975</p> <p>“The Legislature has provided in the Act that a worker receive through an employer reasonable and necessary health care services, which the regulations define to include "drugs, products or items provided to a worker" in various ways provided that they are "reasonable and necessary for the evaluation and treatment of a worker." 11.4.7.7(SS) NMAC (12/31/2011); Section 52-1-49(A). When read together, we view the legislative intent to be that a worker's treatment under a program authorized by the Compassionate Use Act that has been determined by a WCJ to be reasonable and necessary treatment is embraced within the Act.”</p>
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational	No legalization of recreational marijuana found.

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Marijuana Laws & Cases	
Workplace Drug Testing Laws	<p data-bbox="510 269 1102 297">N.M. Stat. Ann. § 9-7-18 (“Health care providers”)</p> <p data-bbox="510 305 1033 332">N.M. Stat. Ann. § 65-3-14 (“Motor carriers”)</p> <p data-bbox="510 378 1451 406">Jaramillo v. City of Albuquerque, 1998-NMCA-062, 125 N.M. 194 958 P.2d 1244</p> <p data-bbox="510 414 1837 548">“The United States Constitution requires more than mere speculation that at some time in the future the City would need Jaramillo to drive a heavy vehicle. The governmental interests that justify suspicionless drug testing must be tied to the “operational realities of the workplace.” Keaveney, 937 F.Supp. at 985 (internal quotation marks deleted).”</p> <p data-bbox="510 594 1707 621">Saavedra v. City of Albuquerque, 917 F. Supp. 760, (D.N.M. 1994), aff'd, 73 F.3d 1525 (10th Cir. 1996)</p> <p data-bbox="510 630 1816 688">“If an employee's duties involve public safety or welfare, the risk, however slight, that off-duty drug use might impair performance of these critical duties justifies nonconsensual drug testing.”</p>

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New York

Medical Marijuana Laws	N.Y. Pub. Health Law §§ 3360 to 3369-E
Workplace Medical Marijuana Laws & Cases	N.Y. Pub Health Law § 3369(2) “Being a certified patient shall be deemed to be having a "disability" under article fifteen of the executive law (human rights law), section forty-c of the civil rights law, sections 240.00, 485.00, and 485.05 of the penal law, and section 200.50 of the criminal procedure law. This subdivision shall not bar the enforcement of a policy prohibiting an employee from performing his or her employment duties while impaired by a controlled substance. This subdivision shall not require any person or entity to do any act that would put the person or entity in violation of federal law or cause it to lose a federal contract or funding.”
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.
Workplace Drug Testing Laws	N.Y. Comp. Codes R. & Regs. tit. 9, § 466.11(h)(6)(ii) “Nothing in these regulations is to be construed to encourage, prohibit, or authorize the conducting of drug tests for the illegal use of drugs by job applicants or employees, or the making of employment decisions based on the test results.”

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North Dakota

Medical Marijuana Laws	N.D.C.C §§ 19-24.1-01 to 19-24.1-40
Workplace Medical Marijuana Laws & Cases	N.D.C.C. § 19-24.1-34 “2. This chapter does not prohibit an employer from disciplining an employee for possessing or consuming usable marijuana in the workplace or for working while under the influence of marijuana.”
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.
Workplace Drug Testing Laws	N.D.C.C. § 15.1-07-20 (“School vehicle driver”) N.D.C.C. § 39-06.2-10.2 (“Commercial motor vehicle drivers”)

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Ohio

Medical Marijuana Laws	Medical Marijuana Control Program, Ohio R.C. 3796.01 to 3796.30
Workplace Medical Marijuana Laws & Cases	<p>Ohio R.C. 3796.28</p> <p>“(A) Nothing in this chapter does any of the following:</p> <ul style="list-style-type: none"> (1) Requires an employer to permit or accommodate an employee's use, possession, or distribution of medical marijuana; (2) Prohibits 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 of that person's use, possession, or distribution of medical marijuana; (3) Prohibits an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy; (4) Interferes with any federal restrictions on employment, including the regulations adopted by the United States department of transportation in Title 49 of the Code of Federal Regulations, as amended; (5) Permits a person to commence a cause of action against an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana; (6) Affects the authority of the administrator of workers' compensation to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program established in accordance with rules adopted by the administrator under Chapter 4123. of the Revised Code. <p>“(B) A person who is discharged from employment because of that person's use of medical marijuana shall be considered to have been discharged for just cause for purposes of division (D) of section 4141.29 of the Revised Code if the person's use of medical marijuana was in violation of an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of medical marijuana.”</p>
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational	No legalization of recreational marijuana found.

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Marijuana Laws & Cases	
Workplace Drug Testing Laws	<p>Ohio R.C. 123:1-76-07 to 123:1-76-14</p> <p>“123:1-76-02 Purpose and responsibility. The administrator of the drug-free workplace services program shall plan for, implement, administer, coordinate and evaluate Ohio's drug-free workplace policy, including any testing and education programs developed for state employees, and shall administer and coordinate Ohio's compliance with provisions of the federal Drug-Free Workplace Act of 1988, the Omnibus Transportation Employee Testing Act of 1991, and any other federal or state laws or regulations requiring substance abuse testing.</p> <p>“123:1-76-10 Reasonable suspicion testing. (G) Employees shall be given the opportunity as required by applicable collective bargaining agreements or, in the absence of such agreements, as stipulated by the director of the department of administrative services to offer an explanation or submit medical documentation of legally prescribed medications, legally recommended medical marijuana, or exposure to toxic substances which may explain a positive test result. Such information shall be reviewed only by the medical review officer in his/ her determination of the validity of a positive confirmatory test and shall be released to the employer only to explain a test result.”</p> <p>State ex rel. Cordell v. Pallet Cos., Inc., 149 Ohio St.3d 483, 2016-Ohio-8446</p> <p>“Appellee, James F. Cordell, was terminated from his employment with appellant Pallet Companies, Inc. (“Pallet”) after failing a routine drug test administered soon after a workplace accident in which he was injured.</p> <p>“When the two-step analysis dictated by Louisiana-Pacific and Reitter Stucco is applied to the facts of this case, it is clear that Cordell voluntarily abandoned his employment when he used an illegal substance prior to sustaining his workplace injury. Therefore, I dissent and would reverse the judgment of the Tenth District Court of Appeals and deny the writ of mandamus against the Ohio Industrial Commission.”</p>



Oklahoma

<p>Medical Marijuana Laws</p>	<p>Okla. Stat. tit. 63 § 420 to § 426</p>
<p>Workplace Medical Marijuana Laws & Cases</p>	<p>Okla. Stat. tit. 63 § 425</p> <p>“B. Unless a failure to do so would cause an employer to imminently lose a monetary or licensing related benefit under Federal law or regulations, an 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:</p> <ol style="list-style-type: none"> 1. The person's status as a medical marijuana license holder; or 2. Employers may take action against a holder of a medical marijuana license holder if the holder uses or possesses marijuana while in the holder's place of employment or during the hours of employment. Employers may not take action against the holder of a medical marijuana license solely based upon the status of an employee as a medical marijuana license holder or the results of a drug test showing positive for marijuana or its components.” <p>Medical Marijuana and Patient Act (approved by Governor on 03/14/2019)</p> <p>“H. Unless otherwise required by federal law or required to obtain federal funding:</p> <ol style="list-style-type: none"> 1. No employer may refuse to hire, discipline, discharge or otherwise penalize an applicant or employee solely on the basis of such applicant's or employee's status as a medical marijuana licensee; and 2. No employer may refuse to hire, discipline, discharge or otherwise penalize an applicant or employee solely on the basis of a positive test for marijuana components or metabolites, unless: <ol style="list-style-type: none"> a. The applicant or employee is not in possession of a valid medical marijuana license, b. The licensee possesses, consumes or is under the influence of medical marijuana or medical marijuana product while at the place of employment or during the fulfillment of employment obligations, or c. The position is one involving safety-sensitive job duties, as such term is defined in subsection K of this section. <p>“I. Nothing in this act or Section 420 et seq. of Title 63 of the Oklahoma Statutes shall:</p> <ol style="list-style-type: none"> 1. Require an employer to permit or accommodate the use of medical marijuana on the property or premises of any place of employment or during hours of employment;



	<p>2. Require an employer, a government medical assistance program, private health insurer, worker's compensation carrier or self-insured employer providing worker's compensation benefits to reimburse a person for costs associated with the use of medical marijuana; or</p> <p>3. Prevent an employer from having written policies regarding drug testing and impairment in accordance with the Oklahoma Standards for Workplace Drug and Alcohol Testing Act, Section 551 et seq. of Title 40 of the Oklahoma Statutes.</p> <p>“J. Any applicant or employee aggrieved by a willful violation of this section shall have, as his or her exclusive remedy, the same remedies as provided for in the Oklahoma Standards for Workplace Drug and Alcohol Testing Act set forth in Section 563 of Title 40 of the Oklahoma Statutes.”</p>
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.
Workplace Drug Testing Laws	<p>Okla. Stat. tit. 40 § 551 to § 563, Standards for Workplace Drug and Alcohol Testing Act</p> <p>“Section 553</p> <p>A. The Standards for Workplace Drug and Alcohol Testing Act shall not be construed as requiring or encouraging employers to conduct drug or alcohol testing.</p> <p>B. Except as provided in subsection C of this section, employers who choose to conduct drug or alcohol testing of job applicants or persons employed in this state shall be governed by the provisions of this act and the rules promulgated pursuant thereto.</p> <p>C. Drug or alcohol testing required by and conducted pursuant to federal law or regulation shall be exempt from the provisions of the Standards for Workplace Drug and Alcohol Testing Act and the rules promulgated pursuant thereto.</p> <p>D. This act shall not be construed as preventing the negotiation of collective bargaining agreements that provide greater protection to employees or applicants than is provided by this act.”</p> <p>Rice v. Valmont Indus., Inc., No. 12-CV-602-GKF-TLW, (N.D. Okla. Oct. 31, 2012)</p>



“Plaintiff Rodney Henry Rice, Jr. (“Rice”) sued Valmont, his former employer, in Tulsa County District Court on October 28, 2011, alleging Valmont had violated the Oklahoma Workplace and Drug and Alcohol Testing Act, 40 O.S. §§ 554, 555, 558 and 563.

“Additionally, a private right of action exists only for willful violations of SWDAT.³ The Amended Petition lacks even a conclusory allegation that the alleged violations of SWDAT were willful, intentional or made with deliberate disregard for the requirements of SWDAT, nor does it allege facts supporting such a conclusion.”



Oregon

Medical Marijuana Laws	Or. Rev. Stat. §§ 475B.785 to 475B.949 .
Workplace Medical Marijuana Laws & Cases	<p>Or. Rev. Stat. § 475B.794</p> <p>“Nothing in ORS 475B.785 to 475B.949 requires:</p> <ul style="list-style-type: none"> (1) A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or (2) An employer to accommodate the medical use of marijuana in the workplace.” <p>Emerald Steel Fabricators, Inc. v. BOLI, 230 P.3d 518 (Or. 2010)</p> <p>“Second, two potentially applicable exclusions from the phrase "illegal use of drugs" — the use of drugs authorized by state law and the use of drugs taken under the supervision of a licensed health care professional — do not apply here. Third, regarding the first potentially applicable exclusion, to the extent that ORS 475.306(1) authorizes the use of medical marijuana, the Controlled Substances Act preempts that subsection.”</p> <p>Freightliner, LLC v. Teamsters Local 305, 336 F. Supp. 2d 1118 (D. Or. 2004)</p> <p>“In this arbitration dispute, petitioner Freightliner, LLC asks the court to vacate an arbitrator’s decision reinstating [an employee] whom Freightliner terminated for using marijuana ... While arbitrators generally may consult external sources for guidance, the problem here is that the plain language of the CBA’s provisions — specifically, the "under the influence" provisions — unambiguously resolve the issue presented. Indeed, as discussed, Snow himself found that Thomas was ‘under the influence,’ which, in turn, meant that Freightliner had the authority to terminate him.”</p>
Recreational Marijuana Laws	Or. Rev. Stat. §§ 475B.005 to 475B.548
Workplace Recreational Marijuana Laws & Cases	<p>Or. Rev. Stat. § 475B.020</p> <p>“ORS 475B.010 to 475B.545 may not be construed:</p> <ul style="list-style-type: none"> (1) To amend or affect state or federal law pertaining to employment matters”
Workplace Drug Testing Laws	See alcohol testing laws, Or. Rev. Stat. §§ 659.840 and 659A.300 .

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[Andrews v. Employment Dep't, 166 Or. App. 401, 410, 998 P.2d 769, 773 \(2000\)](#)

“Viewed in context, the manager's testimony that claimant's behavior was “unusual” cannot support an inference that employer had any reason to believe that claimant was under the influence of drugs.

“Because employer's policy, as applied to claimant, was not reasonable under ORS 657.176(9) and the regulations of the Employment Department, claimant was not disqualified from unemployment benefits for his refusal to submit to drug testing.”

[Hoffman Const. Co. v. Employment Dep't, 173 Or. App. 420, 21 P.3d 1098 \(2001\)](#)

“Even if employer's written policy was susceptible to that interpretation, such a policy could not be deemed a “reasonable employer policy” under OAR 471–030–0145 because it would conflict with the provision found in OAR 471–030–0130(6)(d) that “[n]o test administered after the worker actually begins work (the performance of services) shall be considered a pre-employment test.” The second test was conducted after claimant had performed at least a day's work at employer's job site.”



Pennsylvania

Medical Marijuana Laws	Medical Marijuana Act, 35 P.S. §§ 10231.101 et seq.
Workplace Medical Marijuana Laws & Cases	<p>35 P.S. § 10231.2103(b):</p> <p>“(1) No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana.</p> <p>(2) Nothing in this act shall require an employer to make any accommodation of the use of medical marijuana on the property or premises of any place of employment. This act shall in no way limit an employer's ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position.</p> <p>(3) Nothing in this act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of Federal law.”</p> <p>35 P.S. § 10231.510</p> <p>“(2) A patient may not perform any employment duties at heights or in confined spaces, including, but not limited to, mining while under the influence of medical marijuana.</p> <p>(3) A patient may be prohibited by an employer from performing any task which the employer deems life-threatening, to either the employee or any of the employees of the employer, while under the influence of medical marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.</p> <p>(4) A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk while under the influence of medical marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.”</p> <p>Parrotta v. PECO Energy Co., No. 2:18-cv-02842, 2019 WL 400598 (Jan. 31, 2019)</p> <p>“Self-prescribing marijuana” ...</p> <p>“We grant PECO summary judgment on Mr. Parrotta's claims for (1) disability discrimination under the Americans</p>



	<p>with Disabilities Act and the Pennsylvania Human Relations Act, (2) retaliation under the Disabilities Act and the Pennsylvania Human Relations Act, and (3) retaliation under the FMLA.”</p> <p><u>Palmiter v. Common Wealth Health Systems</u></p> <p>“Nothing in the [Pennsylvania Medical Marijuana Act (MMA)] or the promulgated regulations vests the Department or any other state agency with the authority to enforce Section 2103(b)(1) against private employers that have not chosen to voluntarily take part in that program, and those anti-discrimination provisions would be rendered meaningless if an aggrieved employee could not pursue a private cause of action and seek to recover compensatory damages from an employer that violates Section 2103(b)(1). Recognition of an implied right of action under Section 2103(b)(1) is consistent with the MMA's stated purpose of providing safe and effective access to medical marijuana for eligible patients, while simultaneously protecting them from adverse employment treatment in furtherance of the legislative intent in Section 2103(b)(1).”</p> <p>“An at-will employee may state a cognizable claim for wrongful discharge by averring that she was terminated for a reason that a statute expressly prohibits the employer from using as a basis to terminate the employment relationship. Section 2103(b)(1) of the MMA distinctly states that ‘[n]o employer may discharge...or otherwise discriminate or retaliate against an employee...solely on the basis of such employee's status as an individual who is certified to use medical marijuana.’ Palmiter has alleged that PHA, Moses Taylor, and Commonwealth Health terminated her employment on January 29, 2019, on the singular ground that she was a certified medical marijuana user. Such a discharge ‘implicates a clear mandate of public policy’ as declared by the General Assembly in the unambiguous language of 35 P.S. § 10231.2103(b)(1).”</p>
Recreational Marijuana Laws	No legalization of recreational marijuana found
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.
Workplace Drug Testing Laws	No statutes found.



[*Borse v. Piece Goods Shop, Inc.*, 963 F.2d 611, 626 \(3d Cir. 1992\)](#)

“Dismissing an employee who refused to consent to urinalysis testing and to personal property searches would violate public policy if the testing tortiously invaded the employee's privacy.”

[*Hershberger v. Jersey Shore Steel Co.*, 394 Pa. Super. 363, 575 A.2d 944 \(1990\)](#)

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Rhode Island

Medical Marijuana Laws	The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act, R.I. Gen. Laws §§ 21-28.6-1 to 21-28.6-17
Workplace Medical Marijuana Laws & Cases	<p>R.I. Gen. Laws § 21-28.6-4 “(d) No school, employer, or landlord may refuse to enroll, employ, or lease to, or otherwise penalize, a person solely for his or her status as a cardholder.”</p> <p>R.I. Gen. Laws § 21-28.6-7 “(a) This chapter shall not permit: (1) Any person to undertake any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice; [...] (b) Nothing in this chapter shall be construed to require: [...] (2) An employer to accommodate the medical use of marijuana in any workplace.”</p> <p>Callaghan v. Darlington Fabrics Corp., No. PC-2014-5680 (R.I. Super. May 23, 2017) “However, the Court also believes that there is only one sensible interpretation of § 21-28.6-4(d). The Hawkins-Slater Act must have an implied private right of action.”</p>
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational Marijuana Laws & Cases	No legalization of recreational marijuana found.
Workplace Drug Testing Laws	Urine and Blood Tests as a Condition of Employment, R.I. Gen. Laws §§ 28-6.5-1 to 28-6.5-3

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Vermont

Medical Marijuana Laws	Therapeutic Use of Cannabis, 18 V.S.A. §§ 4471 to 4474m
Workplace Medical Marijuana Laws & Cases	<p>18 V.S.A. § 4474c</p> <p>“(a) This subchapter shall not exempt any person from arrest or prosecution for:</p> <ul style="list-style-type: none"> (1) Being under the influence of marijuana while: [...] <ul style="list-style-type: none"> (B) In a workplace or place of employment; [...] (3) The smoking of marijuana in any public place, including: [...] <ul style="list-style-type: none"> (B) A workplace or place of employment [...] <p>“(b) This chapter shall not be construed to require that coverage or reimbursement for the use of marijuana for symptom relief be provided by: [...]</p> <ul style="list-style-type: none"> (3) An employer; or (4) For purposes of workers' compensation, an employer as defined in 21 V.S.A. § 601(3).”
Recreational Marijuana Laws	<p>18 V.S.A. § 4230</p> <p>“No person shall knowingly and unlawfully possess more than one ounce of marijuana or more than five grams of hashish or cultivate more than two mature marijuana plants or four immature marijuana plants.”</p>
Workplace Recreational Marijuana Laws & Cases	<p>18 V.S.A. § 4230a</p> <p>“(e) Nothing in this section shall be construed to do any of the following:</p> <ul style="list-style-type: none"> (1) Require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace; (2) Prevent an employer from adopting a policy that prohibits the use of marijuana in the workplace; (3) Create a cause of action against an employer that discharges an employee for violating a policy that restricts or prohibits the use of marijuana by employees; or (4) Prevent an employer from prohibiting or otherwise regulating the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana on the employer's premises.”
Workplace Drug Testing Laws	Vermont Drug Testing Act, 21 V.S.A. §§ 511 to 519



Washington

Medical Marijuana Laws	RCW 69.51A.005 to 69.51A.900 .
Workplace Medical Marijuana Laws & Cases	<p>Wash. Rev. Code Ann. § 69.51A.060 (West) “Employers may establish drug-free work policies. Nothing in this chapter requires an accommodation for the medical use of marijuana if an employer has a drug-free workplace.”</p> <p>Roe v. TeleTech Customer Care Mgmt. (Colorado) LLC, 171 Wash. 2d 736, 748, 257 P.3d 586, 591–92 (2011) “The language of MUMA is unambiguous—it does not regulate the conduct of a private employer or protect an employee from being discharged because of authorized medical marijuana use.”</p> <p><i>Swaw v. Safeway, Inc.</i>, No. C15-939 MJP, 2015 WL 7431106, at *2 (W.D. Wash. Nov. 20, 2015) “Here, Safeway maintained a drug-free-workplace policy, a policy to which Plaintiff agreed to adhere. Safeway was entitled to drug test Plaintiff following his workplace injury. Plaintiff tested positive for marijuana while on the job or on company premises, in violation of Safeway's drug-free policy. He was promptly terminated in response to that drug test, in accordance with the CBA's protocols. Defendant was under no legal obligation to make an exception to its policy for Plaintiff, regardless of his medical marijuana prescription.”</p> <p>Roe v. TeleTech Customer Care Mgmt. (Colorado), LLC, 152 Wash. App. 388, 216 P.3d 1055 (2009), aff'd, 171 Wash. 2d 736, 257 P.3d 586 (2011) “We hold that by enacting MUMA, the voters did not intend, explicitly or implicitly, to create a civil cause of action and MUMA does not imply a private right of action.”</p>
Recreational Marijuana Laws	RCW 69.50.325 to 69.50.395 and 69.50.4013 .
Workplace Recreational Marijuana Laws & Cases	<p><i>Brown v. Home Depot</i>, No. C14-0896 RSM, 2015 WL 9839773, at *5 (W.D. Wash. Feb. 5, 2015) “While the Roe court was examining the use of medical marijuana under Washington's Medical Use of Marijuana Act (MUMA), RCW 69.51, et seq., Plaintiff fails to establish that anything under Washington's Recreational Marijuana statute, RCW 69.50, et seq., is any different or establishes any clear public policy to support her claim.”</p>
Workplace Drug Testing Laws	RCW 46.25.001 to 45.25.901 , Uniform Commercial Driver’s License Act.

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[Roe v. Quality Transp. Servs., 67 Wash. App. 604, 838 P.2d 128 \(1992\)](#)

“None of these statutes suggest a legislative intent to announce public policy in the area of drug testing. In fact, their existence suggests to us a legislative desire to articulate public policy in the area of privacy. The Legislature has enacted many statutes specifically regulating employer-employee relationships. See RCW 49 “Labor Regulations”. The fact that the Legislature has not enacted a statute regulating drug testing by private employers is significant.”

[Rhodes v. URM Stores, Inc., 95 Wash. App. 794, 977 P.2d 651 \(1999\)](#)

“The anti-drug policy expressed in the employment handbook is a reasonable safety precaution applicable to all of URM's employees and is thus a bona fide occupational qualification (BFOQ). WAC 162–22–070(3). The violation of a BFOQ is a statutory justification for discrimination.”



West Virginia

Medical Marijuana Laws	West Virginia Medical Cannabis Act, W. Va. Code §§ 16A-1-1 to 16a-16-1
Workplace Medical Marijuana Laws & Cases	<p>W. Va. Code § 16A-5-10</p> <p>“(2) A patient may not perform any employment duties at heights or in confined spaces, including, but not limited to, mining while under the influence of medical cannabis.</p> <p>(3) A patient may be prohibited by an employer from performing any task which the employer deems life-threatening, to either the employee or any of the employees of the employer, while under the influence of medical cannabis. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.</p> <p>(4) A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk while under the influence of medical cannabis. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.”</p> <p>W. Va. Code § 16A-15-4</p> <p>“(b) Employment.</p> <p>(1) No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical cannabis.</p> <p>(2) Nothing in this act shall require an employer to make any accommodation of the use of medical cannabis on the property or premises of any place of employment. This act shall in no way limit an employer's ability to discipline an employee for being under the influence of medical cannabis in the workplace or for working while under the influence of medical cannabis when the employee's conduct falls below the standard of care normally accepted for that position.</p> <p>(3) Nothing in this act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of federal law.”</p>
Recreational Marijuana Laws	No legalization of recreational marijuana found.
Workplace Recreational	No legalization of recreational marijuana found.

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Marijuana Laws & Cases	
Workplace Drug Testing Laws	<p>West Virginia Alcohol and Drug-Free Workplace Act, W. Va. Code §§ 21-1D-1 to 21-1d-9 West Virginia Safer Workplace Act, W. Va. Code §§ 21-3E-1 to 21-3e-16</p> <p>W. Va. Code § 15A-3-5 (“Officers and employees of corrections institutions”) W. Va. Code, § 22A-1A-1 (“Miners”)</p> <p>Twigg v. Hercules Corp., 185 W. Va. 155, 406 S.E.2d 52 (1990) “1. It is contrary to public policy in West Virginia for an employer to require an employee to submit to drug testing since such test portends an invasion of an individual's right to privacy. 2. Drug testing will not be found to be violative of public policy grounded in the potential intrusion of a person's right to privacy where it is conducted by an employer based upon reasonable good faith objective suspicion of an employee's drug usage or while an employee's job responsibility involves public safety or the safety of others.”</p> <p>Baughman v. Wal-Mart Stores, Inc., 215 W. Va. 45, 592 S.E.2d 824 (2003) “Having said this, we agree with the circuit court that the principles of Twigg do not extend to the pre-employment situation and thus do not preclude the granting of summary judgment to Wal-Mart in the instant case. We conclude that the appellant put forth no facts that would show that her right to privacy was violated in the instant case simply as a result of Wal-Mart's requiring her, prior to starting work, to give a urine sample for drug testing purposes.”</p>

