

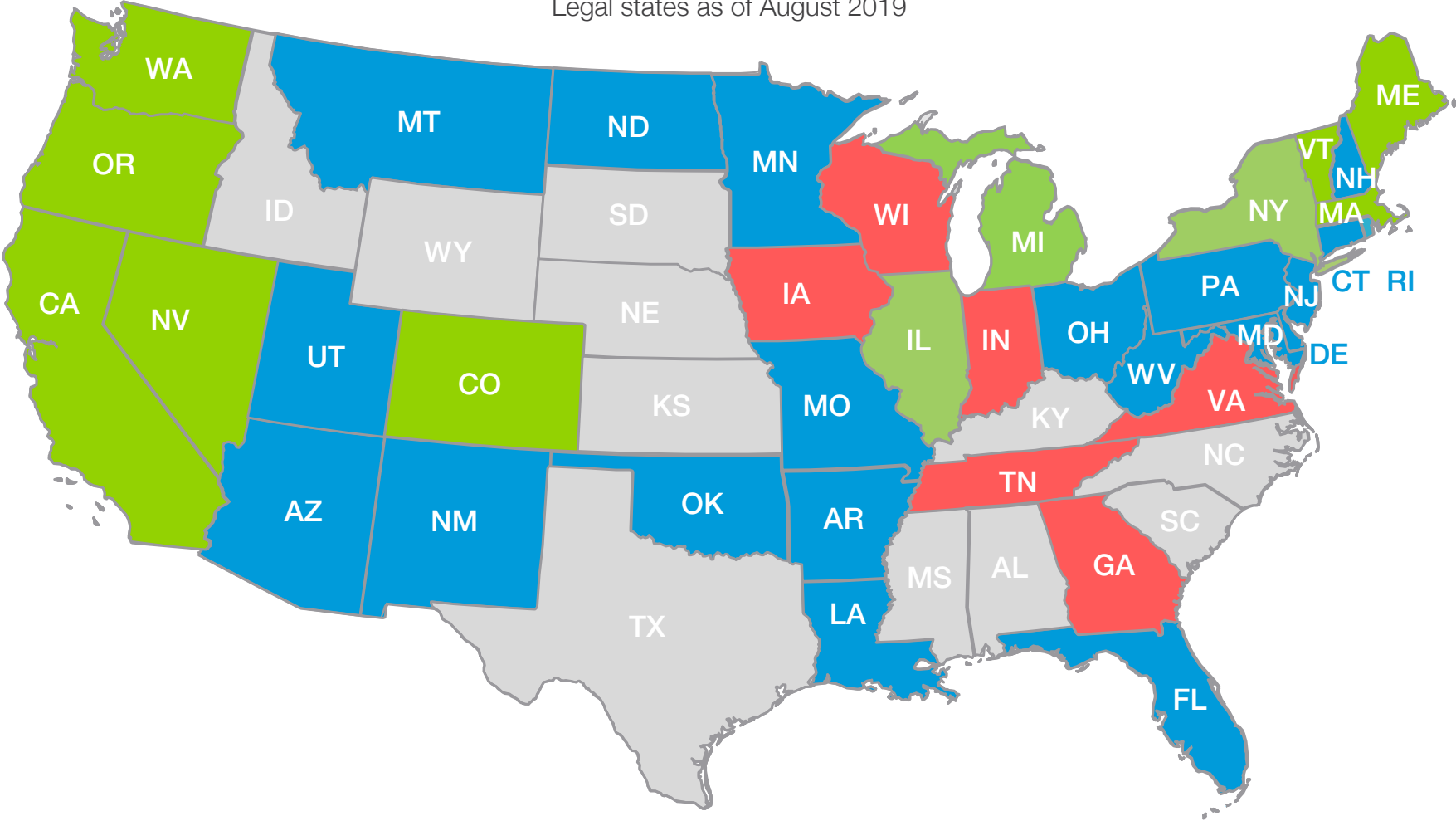
MARIJUANA LAWS AFFECTING EMPLOYERS

STATE LAWS AND EMPLOYER GUIDANCE

As medical and recreational marijuana laws evolve, and with federal law currently in opposition to many state laws, employers face challenges when developing workplace drug policies and understanding their limitations in the area of drug testing. Use the enclosed best practice recommendations and chart for guidance.

Marijuana

Legal states as of August 2019



● **Medical**
Hawaii (not shown)

● **Limited Medical**

● **Medical + Recreational**
Alaska (not shown)
District of Columbia (not shown)

Best Practices and Tips for Employers:

As medical and recreational marijuana laws evolve, and with federal law currently in opposition to many state laws, employers face challenges when developing workplace drug policies and understanding their limitations in the area of drug testing. The following should be considered:

- Understand that no current law interferes with the employer's right to prohibit the use, possession, or distribution of marijuana in the workplace. Even in states where marijuana is legalized for medicinal and/or recreational use, employers may handle marijuana in the same manner as the consumption of alcohol: by prohibiting employee use of or being under the influence of an altering substance while at work. In states where marijuana use has been legalized for medical or recreational purposes, employers may elect to establish intoxication standards for marijuana metabolites rather than imposing discipline for any presence of the drug. Businesses must update policies to ensure clarity about accommodating marijuana use or not during working hours and any subsequent action should an employee be found to be using marijuana.
- Employers are generally still allowed to maintain broader workplace drug testing policies and are wise to evaluate their policies with legal counsel, a risk specialist, human resource advisors, and carriers regarding the liability of pre-employment, general, and post-accident testing. Some states have statutes or case law supporting employers' rights to terminate employees or refuse to hire applicants for positive drug tests resulting from medical marijuana use. However, some states limit employers' ability to take adverse action against applicants and employees based on a positive test for marijuana if they are certified medical marijuana users, and many states prohibit discrimination against employees for having a medical marijuana registration card. Understanding state law(s) will ensure employers develop a compliant policy.
- Some employers may be obligated to maintain drug-free workplaces under federal law (i.e. federal contractors, etc.). Most state laws contain explicit exceptions for these employers, which enable them to continue enforcing such policies. However, employers that currently have or plan to enact zero-tolerance-across-the-board policies for employees in marijuana-friendly states must work with legal counsel to ensure compliance. Recent case law has indicated that employers may not be able to rely on these exceptions in every circumstance. Consider working with legal counsel to develop a policy that will both ensure nondiscrimination consistent with state law while complying with the provisions of a "drug-free workplace" as defined under federal law.
- Safety sensitive positions may continue to be tested for all altering substance use as an employer has a duty to ensure the safety of its employees and the public from actions of the company and its workers.
- Multistate employers must understand the laws on this topic for each state in which they have employees. Enact multistate drug policies where appropriate.
- Public-sector employers must remain aware of the Fourth Amendment's existing prohibition on unreasonable searches as related to drug testing. It is generally illegal for public-sector employers to conduct drug tests of employees unless the employer has reasonable suspicion that an employee is engaging in drug use that affects the employee's ability to perform his or her job responsibilities. Therefore, it is imperative that employers ensure that random drug testing is truly random and consistent with their policies or based on documented and current reasonable suspicion and consistent with policy.

Note: This chart does not include local provisions.

STATE	RECREATIONAL	MEDICINAL	EMPLOYER GUIDANCE	STATUTES
Alabama			No statutory medical or recreational marijuana law that covers private employers.	
Alaska	X	X	Employers are not required to accommodate medical or recreational marijuana use in the workplace, and can have policies that restrict employee marijuana use.	Alaska Stat. §§ 17.37.010 – 17.37.080 and 17.38.010 – 17.38.050
Arizona		X	Employers may not discriminate against medical marijuana users based solely on their status as registered cardholders. Employees and applicants who are registered, qualified patients for medicinal marijuana cannot suffer adverse action for positive drug tests unless they used, possessed, or were impaired by marijuana at the place of employment or during working hours. There is an exception to these rules if compliance would cause the employer to lose money or licensing benefits under federal law. Employers may fire or take other adverse action against employees who use, possess, or are impaired by medical marijuana on company property or during work hours.	Ariz. Rev. Stat. §§ 36- 2801 – 36-2819
Arkansas		X	Employers may not discriminate in hiring, termination, or any term or condition of employment, or otherwise penalize a person based on the person's past or present status as a qualifying medical marijuana patient or designated caregiver. Employers are not required to accommodate the ingestion of marijuana in the workplace or employees working under the influence of marijuana. A positive drug test alone is insufficient to establish a good faith belief of at-work impairment, except in cases of employees in safety-sensitive positions.	Ark. Const. Amend. 98, §§ 1 – 25); Ark. Const. Amend. 98, § 3(f) (3)(A)
California	X	X	Employers need not accommodate medical marijuana use on employer property or premises or during working hours. Additionally, California courts have held in case law that it is not a violation of public policy or California's Fair Employment and Housing Act (Cal. Gov't Code §§ 12900 – 12996) to dismiss a medical marijuana patient employee from employment because the employee tested positive for a chemical found in marijuana (<i>Ross v. RagingWire Telecomm., Inc.</i> , 174 P.3d 200 (Cal. 2008)). Employers may maintain policies prohibiting cannabis use by employees and prospective employees.	Cal. Health & Safety Code §§ 11362.5 and 11362.7 – 11362.83

STATE	RECREATIONAL	MEDICINAL	EMPLOYER GUIDANCE	STATUTES
Colorado	X	X	Employers are not required to accommodate medical or recreational marijuana use in the workplace. Further, Colorado courts have upheld terminations of employees who tested positive for marijuana despite having used the drug to treat a debilitating medical condition in compliance with state law. Because marijuana is still illegal under federal law, employees are not protected from termination for marijuana use as a “lawful activity outside of work.” (<i>Coats v. Dish Network</i> , 350 P.3d 849 (Colo. 2015)).	Colo. Const. Art. XVIII, § 14(10)(b)
Connecticut		X	Employers cannot discriminate against employees or applicants on the sole basis of their status as qualifying medical marijuana patients, unless declining to follow this provision is required by federal law or would result in inability to obtain federal funding. Employers must exercise caution in using the federal funding defense, however, because Connecticut courts have held that the federal law the employer relies on must specifically require the zero-tolerance drug policy or other policy the employer uses to discriminate against a medical marijuana user, rather than the employer adopting such a policy as its preferred method of compliance with federal law. See <i>Noffsinger v. SSC Niantic Operating Co., LLC</i> . However, employers may prohibit the use of intoxicating substances during work hours and may discipline employees for working under the influence.	Conn. Gen. Stat. Ann. §§ 21a-408 – 21a-414 and Regs. Conn. Agencies §§ 21a-408-1 – 21a-408-70
Delaware		X	Employers are not required to accommodate medical marijuana use in the workplace or allow employees to work under the influence. However, employers cannot discriminate against employees or applicants on the sole basis of their status as qualifying patients or because of positive drug tests, unless the patient employees used, possessed, or were impaired by marijuana on employer premises during work hours. Employers may not assume that an employee was under the influence at work solely on the basis of a positive drug test. Employers are excepted from this rule if failure to discriminate or penalize on such bases would cause the employer to lose financial or licensing benefits under federal law.	Del. Code Ann. Tit. 16 §§ 4901A – 4926A
District of Columbia	X	X	Employers are not required to permit or accommodate the use, consumption, possession, display, or growth of marijuana in the workplace and may establish and enforce policies restricting the use of marijuana by employees. The law is silent on whether an employer may discriminate on the basis of an individual being a medical marijuana patient. However, the law does state that a person may not undertake any task under the influence of medical marijuana when doing so would be negligence or professional malpractice.	D.C. Code Ann. §§ 7-1671.01 – 7-1671.13

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Florida		X	Employers are not required to allow the use of medical marijuana in the workplace. Additionally, Florida law does not limit the ability of an employer to establish and enforce a drug-free workplace policy, nor does it require employers to accommodate or allow employees to work while under the influence of marijuana. The law does not allow employees to sue their employer for wrongful termination related to their marijuana use.	Fla. Stat. § 381.986
Georgia		X	The law does not require employers to accommodate medical marijuana users or permit the use of marijuana in the workplace.	Ga. Code Ann. §§ 16-12- 190 – 16-12-191, 31-2A-18, 31-51-1 – 31-51-10, and 51-1-29.6
Hawaii		X	Medical cannabis is not authorized for use at a patient's workplace, so employers may not accommodate medical marijuana use in the workplace.	Haw. Rev. Stat. §§ 329-121 – 329-128 Haw. Admin. R. §§ 11-160-1-11 – 160-56
Idaho			No statutory medical or recreational marijuana law that covers private employers.	
Illinois	X	X	Effective January 1, 2020, cannabis is legalized in Illinois. Employers may still adopt or maintain reasonable zero tolerance or drug-free workplace policies; maintain policies concerning drug testing, smoking, consumption, storage, or use of cannabis in the workplace or while on call; prohibit employees from being under the influence or use cannabis in the workplace, while performing their duties, or while on call; discipline or terminate an employee for violating workplace drug policies; discipline employees who appear to be impaired by cannabis at work if the employee manifests specific, articulable symptoms that decrease or lessen work performance, but must offer the employee a reasonable opportunity to contest the basis of the impairment determination.	410 Ill. Comp. Stat. §§ 130/1 – 130/999 Cannabis Regulation Tax Act
Indiana		X	Indiana has limited medical marijuana protections, and currently does not have laws on employers' rights and obligations related to marijuana.	
Iowa		X	Iowa has limited medical marijuana protections, and currently does not have laws on employers' rights and obligations related to marijuana.	

STATE	RECREATIONAL	MEDICINAL	EMPLOYER GUIDANCE	STATUTES
Kansas			No statutory medical or recreational marijuana law that covers private employers.	
Kentucky			No statutory medical or recreational marijuana law that covers private employers.	
Louisiana		X	Implications to employers are not clear in the text of the law. Until clarity is provided, employers must be mindful that employees who test positive for marijuana may use it legally to treat a disability, and such disability status may be protected under state discrimination laws.	
Maine	X	X	Employers are not required to accommodate marijuana use nor employees working under the influence in any workplace. Employers may create policies restricting marijuana use in the workplace and during work hours, and may discipline employees who are under the influence at work. However, employers cannot discriminate against employees or applicants on the sole basis of their status as qualifying patients unless the employer's failure to discriminate would result in the loss of a federal contract or federal funding.	22 Me. Rev. Stat. Ann. §§ 2421 – 2430-B 10-144 Code Me. R. 122, §§ 1 – 11
Maryland		X	Implications for employers are not clearly stated in Maryland's law. However, the statute says that qualifying patients may not be subject to any civil or administrative penalty, including disciplinary action by a professional licensing board, or "be denied any right or privilege" for the medical use of or possession of medical cannabis. The statute also does not explicitly prohibit employers from testing for marijuana use and does not explicitly protect employees who test positive for any reason.	Md. Health Gen. Code Ann. §§ 13-3301 – 13- 3316
Massachusetts	X	X	Employers are not required to accommodate any on-site medical marijuana use at any place of employment. However, Massachusetts case law has held that allowing off-site use of medical marijuana may be a reasonable accommodation under Massachusetts' disability discrimination law, if it does not cause undue hardship. <i>Barbuto v. Advantage Sales and Marketing, LLC</i> , 78 N.E.3d 37 (Mass., 2017).	Mass. Gen. Laws Ann. ch. 94C §§ 1-1 – 1-17 and 94I 105 Mass. Code Regs. §§ 725.001 – 725.800

STATE	RECREATIONAL	MEDICINAL	EMPLOYER GUIDANCE	STATUTES
Michigan	X	X	Employers are not required to permit or accommodate marijuana use in the workplace or on the employer's property. Further, courts have held that an employer may refuse to hire or may discharge, discipline, or take any other adverse action against an employee for violating a drug-free workplace policy or for working while under the influence of marijuana. However, at least one court has allowed a registered medical marijuana user employee to collect unemployment benefits despite being terminated for a violation of a workplace drug policy. <i>Braska v. Challenge Mfg. Co.</i> , 307 861 N.W.2d 289 (Mich. Ct. App., October 23, 2014).)	Mich. Comp. Laws §§ 333.26421 – 333.26430 Mich. Admin. Code r. §§ 333.101 – 333.13.
Minnesota		X	Employers are prohibited from discriminating against employees or applicants on their status as qualified users of marijuana under the medical marijuana statute, or based on a positive test if they are qualified patients, unless the person uses, possesses, or is impaired by marijuana use at the workplace or during working hours. This rule does not apply if such discrimination is required by federal law or if failure to comply would result in loss of licensing or money provided by federal law.	Minn. Stat. Ann. §§ 152.22 – 152.37
Mississippi			No statutory medical or recreational marijuana law that covers private employers, thus employers may implement zero-tolerance drug policies and take adverse action on the basis of such policies.	
Missouri		X	Employers may enforce drug-free workplace policies prohibiting marijuana use and impairment at work.* Employees may not sue employers for “wrongful discharge, discrimination, or any similar cause of action” if employers prohibit employees from working or attempting to work while under the influence of marijuana or discipline them for doing so. Employers must have an established and conspicuous rule or policy against drug use in order to take advantage of the employer benefits included in Missouri’s workers’ compensation statutes. These benefits include a possible reduction in compensation or forfeiture of their injury claim. *Important: The law does not address marijuana use as a reasonable accommodation.	Missouri Constitution Article XVI
Montana		X	Employers are not required to accommodate marijuana use by registered cardholders and may prohibit the use of medical marijuana in employment contracts. Employees do not have a cause of action under the law for employers discriminating against an employee or discharging an employee for medical marijuana use.	Mont. Code Ann. §§ 50-46-301 – 50-46-345

STATE	RECREATIONAL	MEDICINAL	EMPLOYER GUIDANCE	STATUTES
Nebraska			No statutory medical or recreational marijuana law that covers private employers, thus employers may implement zero-tolerance drug policies and take adverse action on the basis of such policies.	
Nevada	X	X	Employers are not required to allow medical marijuana use in the workplace or to make modifications to the job or working conditions for those who engage in medical marijuana use. However, employers must make accommodations for the medical needs of patient employees if they do not pose a threat of harm or danger, cause undue hardship, or prevent employees from fulfilling their job responsibilities. Nevada law specifically states that the law does not prevent an employer from “maintaining, enacting, and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted” under the law.	Nev. Const. Art. 4, § 38 Nev. Rev. Stat. §§ 453A.010 – 453A.810 Nev. Admin. Code §§ 453A.010 – 453A.240
New Hampshire		X	Employers are not required to accommodate medical marijuana use in the workplace.	N.H. Rev. Stat. §§ 126-X:1 – 126-X:11
New Jersey		X	Employers are not required to accommodate medical cannabis use in the workplace and may take adverse employment action against an employee for possession/use of medical cannabis during work hours or on the employer’s premises. Employers are not required to take any action causing them to violate a federal law, lose a license-related benefit under federal law, or lose a federal contract or federal funding. Employers with a drug testing policy must offer an employee/ applicant who tests positive for medical cannabis an opportunity to present a legitimate medical explanation for the positive result along with a written notice of this right to explain a positive test. Employers may not take any adverse employment action solely based on an employee’s status as a medical cannabis registrant. Employers are not immune from claims of disability discrimination or failure to accommodate a disability under the New Jersey Law Against Discrimination (NJLAD) (a New Jersey employee with a disability may sue an employer under the NJLAD for discrimination based on the employee’s use of medical cannabis).	N.J. Stat. Ann. §§ 24:6I-1 – 24:6I-16 N.J. Admin. Code §§ 8:64-1.1 – 8:64-13.11

STATE	RECREATIONAL	MEDICINAL	EMPLOYER GUIDANCE	STATUTES
New Mexico		X	Employers may not take an adverse employment action against an applicant or employee for legally using medical marijuana, unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations. Employers may prohibit or take adverse employment action against an employee for use of, or being impaired by, medical cannabis during working hours or at the workplace. The law does not apply to an employee who works in a safety-sensitive position.	N.M. Stat. Ann. §§ 26-2B-1 – 26-2A-7 N.M. Admin. Code 7.34.2 Lynn and Erin Compassionate Use Act
New York	X	X	Employers may prohibit marijuana impairment during work. Employers are not required to take any action that would violate federal law or cause the loss of a federal contract or funding. An employer may not discriminate against a certified patient solely for the certified medical use or manufacture of marijuana. New York's medical marijuana law recognizes certified patients as "disabled" and may require reasonable accommodation just as is required for other recognized disabilities.	N.Y. Pub. Health Law §§ 3360 – 3369-E N.Y. Exec. Law §§ 290 – 301
North Carolina			No statutory medical or recreational marijuana law that covers private employers.	
North Dakota		X	Employers may discipline an employee for possessing or consuming marijuana in the workplace or working under the influence.	N.D. Cent. Code §§ 19-24.1-01 – 19-24.1-40
Ohio		X	Employers are not required to permit or accommodate an employee's use, possession, or distribution of medical marijuana. Employers may refuse to hire, discharge, discipline, or otherwise take an adverse employment action regarding hire, tenure, terms, conditions, or privileges of employment because of possession or distribution of medical marijuana. Employers may establish and enforce a drug-testing policy, drug-free workplace policy, or zero-tolerance drug policy.	Ohio Rev. Code Ann. §§ 3796.01 – 3796.30
Oklahoma		X	Effective August 30, 2019, unless otherwise required by federal law or to obtain federal funding, employers may not refuse to hire, discipline, discharge, or otherwise penalize an applicant/employee (employee) solely based on their status as a medical marijuana licensee or a positive test for marijuana components or metabolites, unless the employee does not have a valid medical marijuana license or has safety-sensitive job duties. Employers are not required to permit employees to possess, consume, or be under the influence of medical marijuana at the workplace or during hours of employment.	Okla. Stat. tit. 63, §§ 420 – 427.8(H)

STATE	RECREATIONAL	MEDICINAL	EMPLOYER GUIDANCE	STATUTES
Oregon	X	X	Employers need not accommodate medical marijuana use in the workplace. Oregon case law has held that an employer may terminate an employee for testing positive for marijuana. (<i>Emerald Steel Fabricators, Inc. v. BOLI</i> , 230 P.3d 518 (Or. 2010)). Nothing in Oregon's law pre-empts federal laws.	Or. Rev. Stat. Ann. §§ 475B.785 – 475B.949
Pennsylvania		X	Employers may discipline employees for being under the influence of medical marijuana in the workplace when the employee's conduct falls below the standard of care normally accepted for that position. Employers may not discharge, threaten, refuse to hire, or otherwise discriminate or retaliate against an employee based solely on the employee's status as a person certified to use medical marijuana. However, employers are not required to accommodate medical marijuana use in the workplace or put the employer or an agent of the employer in a position to violate federal law. Additionally, the law prohibits being under the influence of medical marijuana in certain high-risk positions.	35 Pa. Consol. Stat. §§ 10231.101 – 10231.2110
Rhode Island		X	Employers may not refuse to employ or otherwise penalize a person solely for the person's status as a medical marijuana cardholder. However, employers are not required to allow or accommodate medical marijuana use in the workplace.	R.I. Gen. Laws §§ 21-28.6-1 – 21-28.6-17 Code R.I. R. r 216 §§ 20-10-3.1 – 20-10-3.15
South Carolina			No statutory medical or recreational marijuana law that covers private employers.	
South Dakota			No statutory medical or recreational marijuana law that covers private employers.	
Tennessee		X	Tennessee has limited medical marijuana protections, and currently does not have laws on employers' rights and obligations related to marijuana.	Tenn. Code Ann. § 39-17-402 (16) (A)
Texas			No statutory medical or recreational marijuana law that covers private employers.	
Utah		X	Utah's current medical marijuana law does not explicitly address implications for private employers. Note that all employers may need to treat medical marijuana users the same as they treat employees with disabilities under state law, because the underlying conditions qualifying for medical marijuana use also qualify as disabilities under state law.	Utah Medical Cannabis Act (HB 3001)

STATE	RECREATIONAL	MEDICINAL	EMPLOYER GUIDANCE	STATUTES
Vermont	X	X	Employers are not required to permit nor accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace and can make policies prohibiting such actions and consumption of marijuana at work. Drug testing, including for marijuana, is still allowed under the limited circumstances that have been historically allowed under Vermont law. Additionally, while employers may technically continue to have “zero-tolerance” drug policies, such policies may create discrimination issues if adverse action is taken against a medical marijuana card holder to treat a disability, so employers must exercise caution when implementing and enforcing such policies.	Vt. Stat. Ann. tit. 18 §§ 4471 – 4474
Virginia		X	Virginia has limited medical marijuana protections, and currently does not have laws on employers’ rights and obligations related to marijuana. Therefore, Virginia does not provide any protections for prospective or current employees that use medicinal marijuana.	Va. Code Ann. § 54.1 – 3408.3
Washington	X	X	Employers are not required to accommodate medical marijuana use in the workplace and can establish drug-free workplaces.	Wash. Rev. Code §§ 69.51A.005 – 69.51A.900
West Virginia		X	Employers may not discharge, threaten, refuse to hire, or otherwise discriminate or retaliate against an employee solely based on the employee’s status as a person certified to use medical marijuana. However, employers are not required to accommodate medical marijuana use on the job. Employers may discipline employees for being under the influence of medical cannabis only if the employee’s conduct falls under the standard of care normally accepted for that position. Employees are prohibited from being under the influence of medical marijuana in specific safety-sensitive positions.	West Virginia Medical Cannabis Act W. Va. Code §§ 16A-5-10 and 16A-12-9(1)
Wisconsin		X	Wisconsin has limited medical marijuana protections, and currently does not have laws on employers’ rights and obligations related to marijuana.	Wis. Stat. § 961.31(2m)
Wyoming			No statutory medical or recreational marijuana law that covers private employers.	