

# Connecticut's Marijuana Law: What Employers Need to Know

**Connecticut Business and Industries Association (CBIA)**

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# Agenda

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- Current Landscape
- Connecticut's Palliative Use of Marijuana
- Connecticut's New Law Legalizing Marijuana
- Key Takeaways
- Next Steps for Employers



*This information is for educational purposes only to provide general information and a general understanding of the law. It does not constitute legal advice and does not establish any attorney-client relationship.*

# Marijuana Use in the United States

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According to the CDC:

- Marijuana: most commonly used illegal drug (under federal law) in the U.S
  - 48.2 million people, or about 18% of Americans, used it at least once in 2019
- Approximately 3 in 10 people have marijuana use disorder
  - For people who begin using marijuana before age 18, the risk of developing marijuana use disorder is even greater

# Short Term Effects of Marijuana

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- ❑ Altered senses
- ❑ Altered sense of time
- ❑ Changes in mood
- ❑ Impaired body movement
- ❑ Difficulty with thinking and problem-solving
- ❑ Impaired memory
- ❑ Hallucinations, delusions, psychosis (when taken in high doses)

# Impacts on the Workplace

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- According to a study reported by the [National Institute on Drug Abuse](#), employees who tested positive for marijuana had 55% more industrial accidents, 85% more injuries and 75% greater absenteeism compared to those who tested negative
- Also impacting the bottom line are:
  - Decreased productivity
  - Increased worker compensation and unemployment compensation claims
  - High turnover
  - Lawsuits

# Current Legal Landscape

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## Federal Controlled Substances Act

- ❑ Schedule I controlled substance
- ❑ High potential for abuse, no currently accepted medical treatment use, and it has a lack of accepted safety for use under medical supervision. Schedule 1 drugs are effectively illegal for anything outside of research

## Americans With Disabilities Act (ADA)

- ❑ Employers must provide reasonable accommodations for individuals with a covered disability

## Current Legal Landscape

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### Connecticut Fair Employment Practices Act (CFEPA)

- Similar to ADA, requires reasonable accommodations for employees with a covered disability

### Connecticut's "Palliative Use of Marijuana Act" (PUMA)

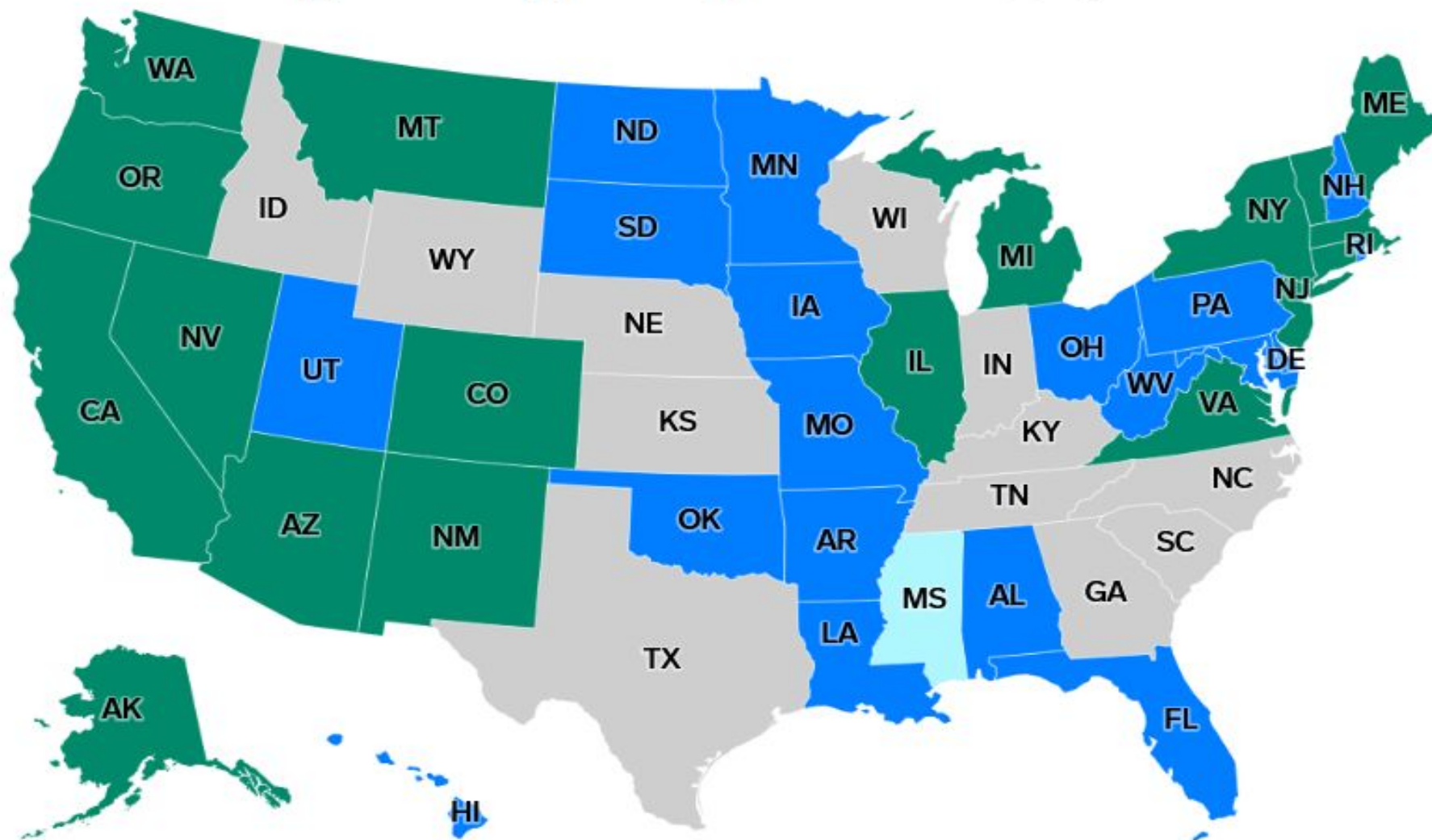
- Passed in 2012, it allows qualifying patients 18 years or older to use marijuana for medicinal purposes

### Connecticut's (new) "Responsible and Equitable Regulation of Adult-Use Cannabis Act" (RERACA)

- Passed in 2021, it legalizes recreational marijuana for individuals 21 and older

# States where cannabis is legal

Recreational Medical Voted for medical Illegal



Note: Updated as of July 2, 2021.



# Overview of Connecticut's Existing Law on Palliative Use of Marijuana

# Who Does Connecticut's Medical Marijuana Law Protect?

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## Qualifying Patients

- ❑ Resident of Connecticut
- ❑ “Debilitating medical condition”
- ❑ Generally, 18 years or older (note this age is different than RERACA)
- ❑ Registered with the Connecticut Department of Consumer Protection
- ❑ Written certification from a physician or APRN

## Caregivers

- ❑ 18 years or older (note this age is different than RERACA)
- ❑ Responsible for managing the well-being of a qualifying patient, but is not the qualifying patient's physician or APRN

# What Legal Protections Exist for Employees and Who Use Medical Marijuana?

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Unless required by federal law or required to obtain federal funding:

- 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 caregiver

## ...but Marijuana is Illegal Under Federal Law

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True, but Connecticut law protects qualifying patients



# Valid Exceptions

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An employer may discharge, discipline, or refuse to hire an employee for use of medical marijuana if:

- ❑ Required to do so by federal law; or
- ❑ Required to do so in order to receive federal funding

# Can a Qualifying Patient Use Marijuana at Work for Medicinal Purposes?

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- Connecticut law does not restrict an employer's ability to:
  - prohibit the use of intoxicating substances during work hours and discipline an employee for being under the influence of intoxicating substances during work hours
  - prohibit the ingestion of medical marijuana in the workplace
- Also, employers do not have to permit the palliative use of marijuana when it “endangers the health or well-being of a person other than the qualifying patient or the primary caregiver”

# Medical Marijuana and the ADA and CFEPA

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Are qualified patients entitled to a reasonable accommodation or other protections under the ADA or CFEPA?

- Probably not under the ADA (James v. Costa Mesa, (9th Cir. 2012)).  
Marijuana use is still illegal under federal law
- Connecticut law—the answer is not clear. Probably TBD

# Connecticut's New Law Legalizing Marijuana

**“Responsible and Equitable Regulation of Adult-Use  
Cannabis Act” (RERACA)**



# What are Some Key Components of RERACA?

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**Legal Possession** — Beginning July 1, 2021, adults aged 21 and over may possess up to 1.5 ounces of cannabis on their person, and up to 5 ounces in their homes or locked in their car trunk or glove box

**Retail sales** — Retail sale of cannabis will begin in Connecticut by the end of 2022. The sale, manufacture, delivery and cultivation of cannabis (aside from home grow) requires a license from the state

**Homegrown** — Qualifying patients may cultivate up to 3 mature cannabis plants within their homes beginning October 1, 2021, and all adults aged 21 and over will be permitted to grow a similar number of plants indoors within their homes beginning July 1, 2023

## What are Some Key Components of RERACA? (cont'd)

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**Erases prior convictions** — Certain cannabis-related convictions that occurred between January 1, 2000 and October 1, 2015 will be automatically erased

**Equity and investments** — At least half of all initial licenses to sell marijuana will be reserved for “social equity” applicants, targeting those individuals who have been most negatively impacted by the laws prohibiting illegal drugs

**Revenue** — Tax rate structure on the retail sale of cannabis with portions of revenue going to municipalities, to communities most negatively impacted by laws prohibiting illegal drugs, and for substance misuse and treatment

## Recreational Marijuana— RERACA

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- 19<sup>th</sup> state to legalize recreational marijuana use by adults
- Most employment-related provisions are not effective until **July 1, 2022**
- No immediate action is required by employers

# Smoking, Vaping and Use of Nicotine/Cannabis Delivery Systems

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- Effective October 1, 2021
- Employers shall prohibit smoking and the use of electronic nicotine and cannabis delivery systems and vapor products in any area of any business facility under the employer's control
- Employer may designate entire business facility and real property as non-smoking
- Policy required

# What are the Key Takeaways?

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Some employers are exempted from the employment-related provisions:

- ❑ Manufacturing
- ❑ Construction
- ❑ Transportation or delivery
- ❑ Educational services
- ❑ National Security & international affairs
- ❑ Mining
- ❑ Utilities
- ❑ Health care or social services
- ❑ Justice, public order and safety activities

# What are the Key Takeaways?

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Some positions are exempted, such as:

- ❑ Firefighter, EMT, police/peace officer
- ❑ Requires operation of a motor vehicle, for which federal or state law requires the employee to submit to a screening test
- ❑ Requires certification of completion of a course in construction safety and health by OSHA
- ❑ Funded in whole or in part by a federal grant
- ❑ Requires supervision or care of children, medical patients or vulnerable persons
- ❑ Potential to adversely impact health or safety of employees, or members of the public, in the determination of the employer

# What are the Key Takeaways?

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## Regarding Marijuana In the Workplace:

- All employers may prohibit employees from performing duties under the influence of marijuana
- All employers may prohibit employees from possessing, using or otherwise consuming marijuana while performing duties or off the premises of the employer
  - **EXCEPTION**: must allow qualifying patient to possess palliative marijuana

# What are the Key Takeaways?

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## Regarding Marijuana Use Outside the Workplace

- ***All employers may implement a policy prohibiting possession, use or other consumption of marijuana***
  - EXCEPTION: cannot discharge, penalize or threaten an employee solely on the basis of the person's status as a qualifying patient
  - cannot violate rights of qualifying patients—e.g., cannot prohibit qualifying patient from possessing marijuana
- Policy must be written (physical or electronic form) and available to employees prior to enactment and available to a prospective employee when conditional offer of employment is made



# What Are the Restrictions Absent a Policy?

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Absent a policy, the employer may not take any adverse action against an employee or prospective employee because:

- the employee does or does not smoke, vape, aerosolize or otherwise use cannabis products **outside of the workplace**; or
- the employee or prospective employee had or had not smoked, vaped, aerosolized or otherwise used cannabis products **outside of the workplace** before such employee or prospective employee was employed by such employer

# Drug Testing Employees

# May Employers Conduct Urinalysis Drug Testing of its Employees?

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## Pre-employment:

- ❑ Inform applicant in writing
- ❑ Test must be conducted in accordance with Connecticut law
- ❑ Provide copy of any positive drug test result
- ❑ Maintain confidentiality
- ❑ May not test applicant who was employed by employer during last 12 months

# May Employers Conduct Urinalysis Drug Testing of its Employees?

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During employment:

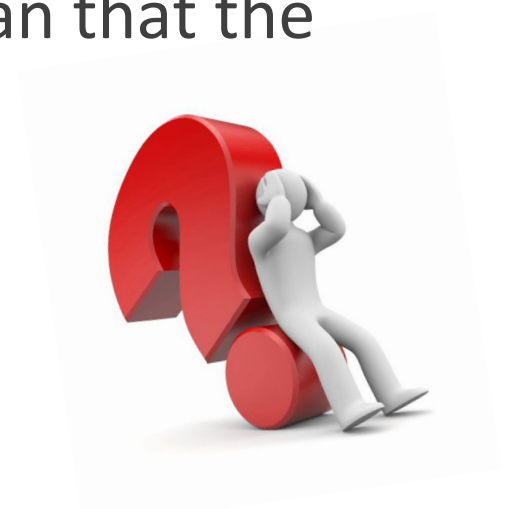
- Random urinalysis testing is permitted only if:
  - (1) authorized under federal law (e.g., CDL drivers);
  - (2) position has been designated as safety sensitive by the Department of Labor; or
  - (3) testing is conducted pursuant to an EAP program in which employee voluntarily participates
- There is reasonable suspicion to believe that the employee is under the influence of drugs or alcohol

## The Big Issue (at least for now)

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Because of the way the human body metabolizes cannabis, traces of marijuana can persist in a person's body for 30 days or longer after it was used

Therefore, a positive drug test does not necessarily mean that the individual is impaired at the time the test was given



# Taking Employment Action Absent a Positive Test

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RERACA does not limit employer's right to take adverse action:

- Upon **reasonable suspicion** of marijuana use at work
- Good faith determination that employee manifests **specific, articulable symptoms of drug impairment** at work

## Specific, Articulate Symptoms

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- Employee's speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operating equipment or machinery
- Disregard for safety of employee or others, or involvement in any accident resulting in serious damage to equipment or property
- Disruption of a production or manufacturing process
- Carelessness that results in any injury to the employee or others

# Can you Terminate an Employee for Being an Alcohol or Substance Abuser?

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- ❑ Addiction is a covered disability under the ADA
- ❑ ADA does not protect individual who currently engages in illegal use of drugs or alcohol, but may protect a recovering addict
- ❑ Individuals with addiction may be held to same performance and conduct standards as other employees



# Violations of RERACA

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- ❑ Private cause of action
- ❑ Reinstatement or be hired
- ❑ Back wages
- ❑ Reasonable attorney's fees and costs



# What Should Employers Be Doing Now

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- Become informed
- Understand the trend and developments
  - Not just smoking but consumption (edibles, consumables, liquids, patches, etc.)
- Determine what position the company wants to take with regard to marijuana use by employees
  - Treat like alcohol use?
  - Prohibit use in all circumstances
- Draft/revise policy on use of drugs

## Some Key Policy Pointers

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- ❑ Prohibit use, possession and being under the influence at work
  - ❑ Exception for use by qualifying patients
- ❑ Employer's position on use of marijuana outside of work
- ❑ Right to test
  - ❑ Upon hire (if applicable)
  - ❑ During employment



## Some Key Policy Pointers

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- Define circumstances in which employer will require testing and/or take action—i.e., reasonable suspicion and where employee manifests specific, articulable symptoms of drug impairment while working
  - List factors
- Consequences for violation of policy
- Distribution of policy
- Consistent enforcement



# Thank You!

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