LEGAL UPDATE

Marijuana Use in California – An Employer's Guide to Rights and Obligations

By: Christopher Boucher and Monna Radulovich
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On November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Marijuana Act ("the Adult Use of Marijuana Act" or the "Act") through the passage of Proposition 64, which legalized the use of recreational marijuana throughout the state. This article is intended to address the practical impact, if any, following the passage of the Adult Use of Marijuana Act, as well as highlight an employer's rights and obligations under the various applicable federal and state statutes related to the use of marijuana in the workplace.

I.

RECREATIONAL USE OF MARIJUANA

In summary, Proposition 64 legalizes marijuana under California state law for use by adults age 21 or older. It also imposes state taxes on sales and cultivation, provides for industry licensing and establishes standards for marijuana products. Proposition 64 amended, repealed, and added various sections to the Business and Professions Code, the Food and Agricultural Code, the Health and Safety Code, the Labor Code, the Revenue and Taxation Code, and the Water Code to effectuate the legalization and regulation of recreational marijuana use in California. The primary changes that affect California employers are codified in the Health and Safety Code. This article will focus on the provisions that specifically impact the workplace.

Under the Adult Use of Marijuana Act, it is now legal for anyone over the age of 21 in California to possess, process, transport, purchase, obtain, or give away marijuana[1] to persons 21 years of age or older. An individual cannot possess more than 28.5 grams of non-concentrated cannabis or eight grams of concentrated cannabis. Health & Safety Code §11362.1(1) and (2).

Despite the legalization of marijuana use and possession, legal restrictions remain which prohibit smoking[2] or ingesting marijuana or marijuana products:[3] (1) in any public place; (2) in locations

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[1] Section 11018 of the Health and Safety Code has been amended to define marijuana as "all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin."

[2] "Smoking" is defined as inhaling, exhaling, burning, or carrying any lighted or heated device or pipe or any other lighted or heated marijuana or marijuana product intended for inhalation; using an electronic smoking device

where smoking tobacco is prohibited; (3) within 1,000 feet or on the grounds of a school, day care center, or youth center while children are present; and (4) while driving or operating a motor vehicle, boat, vessel, aircraft or other vehicle used for transportation. Health & Safety Code §11362.3(a). In addition, the law prohibits individuals from possessing an open container or package of marijuana or marijuana products while driving, operating or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft or other vehicle used for transportation. Persons riding in the passenger seat or compartment of any such vehicles are further prohibited from smoking or ingesting marijuana or marijuana products, except for such vehicles operated in accordance with section 26200 of the Business and Professions Code (which relates to commercial entities licensed to sell marijuana) and provided that no one under the age of 21 is present.

Therefore, in light of these limitations, public employers can legally prohibit the smoking or ingesting of marijuana at public buildings and/or any indoor workplace, as well as when driving for work purposes. Furthermore, school districts, municipalities or other public agencies that operate childcare facilities or youth centers can also legally ban employees from smoking marijuana at the workplace while children are present. In general, California law already has provisions in place to ban cigarette smoking within 20 feet of a main exit, entrance, or operable window of a public building, and as such, employees must continue to abide by the pre-existing law under the Adult Use of Marijuana Act. Gov't Code §7597(a).

The Adult Use of Marijuana Act, however, provides even more authority to employers. It expressly provides that both public and private employers retain the right to maintain a drug and alcohol free workplace, and employers are not required to permit or accommodate the use, consumption, possession, display, sale, transportation, or growth of marijuana in the workplace. It further specifies that the Act does not affect the employers' ability to have policies prohibiting the use of marijuana by employees and prospective employees. The Adult Use of Marijuana Act also does not affect an employers' obligation to otherwise comply with other applicable federal or state laws, such as for employers who have commercial driving or safety-sensitive positions (discussed below). Health & Safety Code §11362.45(f).

In other words, for employers that currently have a drug free policy, the passage of the Adult Use of Marijuana Act does not impact the employer's existing right to prohibit recreational marijuana usage at work, to prohibit employees from being under the influence of marijuana while at work, to conduct pre-employment and other drug testing (i.e. reasonable suspicion testing, and random drug testing for covered employees under the Department of Transportation regulations) consistent with applicable State and Federal law, and to enforce existing policy concerning the use and possession of marijuana and/or other tobacco products at the workplace.

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that creates an aerosol or vapor; or using any oral smoking device for the purpose of circumventing the prohibition of smoking in a place. Health & Safety Code §11362.3(c).

[3] Section 11018.1 of the Health and Safety Code has been added to define marijuana products as "marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients."

II.

MEDICAL USE OF MARIJUANA

Currently, California allows the use of marijuana for medicinal purposes via the passage of Proposition 215 in 1996, which is more commonly known as the Compassionate Use Act of 1996. Health & Safety Code §11362.5. This statute provides individuals with the right to obtain and use marijuana for medicinal purposes where that medical use is "deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana … for which marijuana provides relief." Health & Safety Code §11362.5(b)(1)(A). It also ensures that qualified patients who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. Health & Safety Code §11362.5(b)(1)(B).

A qualified patient with a documented medical need and as approved by their physician may legally obtain, possess, and cultivate marijuana to obtain medical relief for a "serious medical condition," which is defined as: acquired immune deficiency syndrome (AIDS); anorexia; arthritis; cachexia; cancer; chronic pain; glaucoma; migraine; persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis; seizures, including, but not limited to, seizures associated with epilepsy; and severe nausea. It also covers any other chronic or persistent medical symptom that either: i) substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990; or ii) if not alleviated, may cause serious harm to the patient's safety or physical or mental health. Health & Safety Code §11362.7(h).

In general, a qualified patient may possess no more than eight ounces of dried marijuana. In addition, a qualified patient may also maintain no more than six mature or 12 immature marijuana plants. Health & Safety Code §11362.77(a).

Existing law, however, does not require any accommodation of the use of medicinal marijuana on the property or premises of any place of employment or during the hours of employment. Health & Safety Code §11362.785(a). In addition, a qualified patient cannot smoke marijuana in any place where smoking is prohibited by law, in or within 1,000 feet of the grounds of a school, recreation center, or youth center, on a school bus, while in a motor vehicle that is being operated or while operating a boat. Health & Safety Code §11362.79.

In 2008, the California Supreme Court concluded that employers are not required to accommodate an employee's use of medical marijuana. *Ross v. Ragingwire Telecommunications, Inc.* (2008) 42 Cal. 4th 920. Ross, who was using medicinal marijuana to treat chronic pain from a back injury, claimed that his employer violated the Fair Employment and Housing Act ("FEHA") by failing to reasonably accommodate his disability when it terminated his employment based upon a pre-employment drug test on which he tested positive for chemicals found in marijuana.[4] When Ross reported to the clinic for the drug test, he gave to the testing clinic a copy of his physician's recommendation for his use of medicinal marijuana.

[4] Ragingwire permitted Ross to begin working before it had received the results from the pre-employment drug test.

After he received his positive test result, Ragingwire suspended his employment, and Ross explained to Human Resources that he used medical marijuana under his physician's direction for treatment of his back disability. Ross argued that his use of the medicinal marijuana did not impact his ability to perform the essential functions of his job and he had performed his job duties without complaint while using medicinal marijuana. Ragingwire terminated his employment based upon the positive marijuana test results.

The California Supreme Court evaluated whether or not Ragingwire was obligated under the FEHA to accommodate Ross' disability by permitting him to use marijuana at home and waiving its policy of requiring a negative drug test result. The Court concluded that Ragingwire had no such obligation under the FEHA or the Compassionate Use Act. The Court proceeded to find that the Compassionate Use Act only exempts medicinal marijuana users and their care givers from criminal liability. It does not address the respective rights and duties of employers and employees in the workplace. The Court reasoned that California law, under *Loder v. City of Glendale* (1997) 14 Cal. 4th 846, allows employers to require pre-employment drug tests and to take illegal drug use into consideration in making employment decisions. The Court specifically noted the strong interests of employers to have a drug and alcohol free workplace because these substances cause increased absenteeism, diminished productivity, greater health costs, increased safety problems and potential liability risks to third parties. The Court further reasoned that: (1) the Compassionate Use Act had not placed medicinal marijuana in the same status as the use of legal prescription drugs; and (2) ***no State law could completely legalize marijuana for medical purposes because marijuana remains illegal under federal law*** even for medicinal purposes. Based upon all of these factors, the Court concluded that the employer had no obligation to reasonably accommodate the employee's disability by allowing the use of medicinal marijuana or establishing an exception to the company's pre-employment drug test policy.

The Legislature did not amend the Compassionate Use Act after the Supreme Court's decision to require employers to reasonably accommodate the use of medicinal marijuana. Nor does Proposition 64 alter the outcome of *Ragingwire*. Instead, it has added section 11362.45 of the Health and Safety Code to specify that the legalization of marijuana in California "shall not be construed or interpreted to 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 marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law."

Therefore, employers are not required to allow the smoking, use or possession of marijuana in the workplace, even if it is for medicinal purposes. Furthermore, employers may adopt and enforce reasonable policies related to a drug-free workplace, including the ability to monitor employees for drug impairment, conduct pre-employment and reasonable suspicion drug testing provided the employer does so consistent with applicable legal requirements, as well as conduct random drug testing for covered employees and certain safety sensitive positions under DOT regulations.

Nevertheless, in the event that an employee "presents a (marijuana) card" to the employer, the employer should follow its own policies as well as existing law to determine whether the need for an interactive process arises, and whether the employer can accommodate the restrictions presented by the employee (discussed below).

III.

EMPLOYEES COVERED BY DOT OR IN SAFETY-SENSITIVE CLASSIFICATIONS OR FEDERAL ENTITIES AND CONTRACTORS

For employers with commercial (generally, Class A) drivers or safety-sensitive positions, Department of Transportation ("DOT") regulations require the testing for, and prohibit the use of, controlled drugs under 21 CFR §1308.11 Schedule I.[5] This includes marijuana, cocaine, opiates, amphetamines and methamphetamines, and phencyclidine. 49 CFR §382.213(a). Marijuana remains classified as a Schedule I drug under Federal law. 21 USC §812(c)(10). The Drug Enforcement Administration defines Schedule I drugs, substances, or chemicals as "drugs with no currently accepted medical use and a high potential for abuse." Drug Enforcement Administration, Drug Scheduling, https://www.dea.gov/druginfo/ds.shtml (last visited November 14, 2016). As such, Federal law does not recognize the use of marijuana for recreational or medicinal purposes. The passage of Proposition 64 in California does not change this result.

Therefore, for employees in classifications covered by the DOT regulations, employers must still conduct drug testing in pre-employment, post-accident, random, reasonable suspicion, return-to-duty, and follow-up scenarios consistent with DOT regulations, which include testing for marijuana use. 49 CFR §382.301 - §382.311. Employers must also continue to follow existing DOT standards for covered employees who have tested positive for marijuana use. For employees who appear to be under the influence of drugs, employers should follow existing DOT standards to conduct reasonable suspicion testing and follow any current policies in the event of positive results.

Additionally, for federal entities and federal contractors, because marijuana is still illegal under federal laws, the United States Supreme Court has held that federal law trumps any state law which permits the use of marijuana. *Gonzales v. Raich* (2005), 545 U.S. 1, 125 S.Ct. 2195. Accordingly, employers which are federal entities and federal contractors should continue to enforce a "zero tolerance" workplace.

It should also be noted that Section 5(a)(1) of the Occupational Safety and Health Act (OSHA) of 1970 (more commonly known as the "General Duty Clause") requires that employers maintain workplaces that are "free from recognized hazards that are causing or are likely to cause death or serious physical harm" to employees. Impairment by marijuana may be considered such a hazard.

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[5] The DOT regulations also prohibit employees who perform these job functions to have an alcohol concentration of 0.04 or greater. 49 CFR §382.201.

IV.

PROPOSITION 64 AND THE INTERACTIVE PROCESS OBLIGATIONS UNDER APPLICABLE FEDERAL AND STATE LAWS

As discussed above, California state law allows marijuana use for both recreational and medicinal purposes. In addition, the FEHA protects the right of individuals to seek, obtain, and hold employment without discrimination on the basis of physical or mental disability or medical condition. Gov't Code §12940(a). The FEHA and the federal Americans with Disabilities Amendments Act ("ADAAA")[6] require covered employers to reasonably accommodate employees' and applicants' physical[7] or mental[8] disabilities to enable them to perform the essential functions of the job, when the employer knows of the disability and need for accommodation. 42 U.S.C. §12112(b)(5)(A) and Gov't Code §12940(m)(1). Reasonable accommodation includes modifications or adjustments to job duties[9] or the work environment, the providing of equipment, devices or tools, the modification of policies, the providing of modified work schedules, and/or providing other measures that enable an employee to perform the essential functions of the employee's position. 42 U.S.C. §12111(9); 2 Cal. Code Regs. §11065(p).

In the event that no reasonable accommodation will enable an employee to perform the essential functions of the job, a leave of absence could serve as a reasonable accommodation if it will enable the employee to perform the essential functions of the job (either with or without reasonable accommodation) at the expiration of the leave. 2 Cal. Code Regs. §11068(c). The law does not require an employer to provide an accommodation when it would constitute an undue hardship or when the employee cannot perform the essential job functions in a manner

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[6] The Americans with Disabilities Act, as amended in 2008, is located at 42 U.S.C. §12101, *et seq.*

[7] Section 12926(m) of the Government Code defines physical disability as follows: "'Physical disability' includes, but is not limited to, all of the following: (1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following: (A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine. (B) Limits a major life activity. For purposes of this section: (i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity. (ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult. (iii) "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working."

[8] Section 12926(j) of the Government Code defines mental disability as follows: "'Mental disability' includes, but is not limited to, all of the following: (1) Having any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section: (A) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity. (B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult. (C) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working."

[9] An employer is not required to eliminate an essential function of an employee's job.

that would not endanger the employee's health or safety or the health or safety of others even with a reasonable accommodation. 42 U.S.C. §§12111(3) & (10), and 12112(b)(5)(A); Gov't Code §§12940(a)(1) and (2), and (m)(1).

Given that California law construes disability broadly to include medical conditions that limit a "major life activity," and in light of the legality of marijuana under Proposition 64, employers may experience an increase in requests by employees to be allowed to consume marijuana or marijuana products (either by smoke, edibles, or other means) at the workplace or come to work under the influence of marijuana as a reasonable accommodation of a "disability."

It should be noted that although employers are generally required to engage in a good faith interactive process and explore reasonable accommodations with a covered employee under the FEHA and/or ADAAA, the focus of the interactive process should be on the medical restrictions that preclude an employee from performing certain job functions, and whether accommodations can be made to ensure that an employee can perform all of the essential job functions. The focus should not be on the medication or other mitigating measures used, such as assistive devices unless the mitigating measure itself limits a major life activity. Gov't Code §§12926(j) and (m).

As set forth above, the California Supreme Court has determined that employers are not required to allow marijuana in the workplace as a reasonable accommodation for a disabled employee or applicant.[10] Nevertheless, the employer should still engage in an interactive process with the employee seeking the accommodation relating to the use of marijuana to find out how, if at all, the underlying condition (for which the medicinal marijuana has been authorized by the health care provider) affects the employee's ability to perform the job duties; how often the employee must use the marijuana; and to the extent the employee is unable to perform any essential job duties, for each such duty, discuss what would enable the employee to perform that duty. The employer should also obtain information from the employee's health care provider verifying the authorization for the medical marijuana treatment, the existence of a "disability," and the employee's resulting work restrictions. The employer should further consider seeking the advice from its own occupational health care provider to help the employer evaluate how long the effects of the marijuana will remain in the employee's system and have the potential for impacting the ability to perform his or her job and/or the ability to perform the job without undue risk to the health and safety of the employee or others.

During the interactive process, employers wishing to maintain a drug free workplace can explain to the employee that the agency does not allow the use of marijuana at work and then explore alternative reasonable accommodations, including, but not limited to, time off from work, alternative work schedules, modified duty, or other options that will meet the needs of the organization and otherwise comply with all organizational policies.[11] For instance, a leave of absence for the time the employee is using the medical marijuana, plus a period thereafter for it

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[10] The ADAAA does not recognize the use of marijuana as a reasonable accommodation because marijuana is not legal under federal law. The ADAAA further excludes from the definition of "a qualified individual with a disability" persons who currently use illegal drugs, when the employer acts on the basis of such illegal drug use. 42 U.S.C. §12114; 42 C.F.R. §§1630.3(a)(1) &(2).

[11] Remember, the employer should not dictate the employee's treatment options. The employee must decide whether to continue to use medicinal marijuana or use another treatment option.

to be out of the employee's system, may be a reasonable accommodation depending upon the circumstances. Employers may also continue to enforce drug free workplace standards.

Despite the current status of the law, if an employer wishes to accommodate medicinal marijuana use at the workplace, it can do so. However, the employer should carefully analyze the nexus between the use of the marijuana and the employee's job duties, as well as whether allowing such use causes undue risk to the health and safety of the employee, other employees or other persons. The employer must also remember that any marijuana use still violates federal law (as discussed above). In addition, any accommodation would need to be crafted carefully to avoid second-hand exposure risks to other employees and persons, as well as to comply with the restrictions on the locations where marijuana may be used and/or possessed.

It should be noted that, for DOT or safety sensitive employees or federal entities and federal contractors, employers must continue to enforce the ban of Schedule I controlled substances, which includes marijuana.

V.

EMPLOYER GUIDANCE; PRACTICAL TIPS

In light of the passage of the Adult Use of Marijuana Act, employers should review their personnel manuals, employee handbooks, policies, procedures, and applicable MOU provisions concerning a drug-free workplace, smoking, substance abuse, and marijuana use. While it may not be necessary to specifically use the term "marijuana" in any policies or manuals, it is nevertheless recommended to do so because employees might otherwise claim that they had understood that marijuana use is now legal and therefore not prohibited by the employer's policies. Employers should adopt standards to ensure that all employees are free from the influence or impairment of alcohol, drugs,[12] or *any other substance, including marijuana*. This will ensure that marijuana use is covered under the employer's policy. Regardless of what drug testing policy is in place, it should always be clear that it is not permissible to be under the influence of alcohol, drugs, or any other substance while at work.

In addition, any policies governing the above should include provisions concerning reasonable suspicion. Reasonable suspicion is generally defined as instances when specific, reliable objective facts and circumstances are sufficient for a prudent person to believe that the employee more probably than not has used a drug or alcohol as evidenced by work performance, behavior or appearance while at work. [13] Supervisors and managers should receive training on reasonable suspicion, monitor the workplace for incompatible activities or behaviors, and follow organizational protocols for reporting and handling employees suspected of being under the impairment of alcohol or drugs.

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[12] A "zero tolerance" policy should coincide with existing policies for other drugs such as amphetamines, opioids, sleeping pills, and pain killers.

[13] The following may constitute some of the reasonable causes to believe that an employee is under the influence of drugs or alcohol: (a) incoherent, slurred speech; (b) odor of alcohol on the breath; (c) staggering gait, disorientation, or loss of balance; (d) red and watery eyes, if not explained by environmental causes; (e) paranoid or bizarre behavior; or (f) unexplained drowsiness.

Those employers, who intend to maintain a drug-free workplace or otherwise prohibit the use of marijuana at work (including break and meal periods) or the reporting to work and/or working while under the influence of marijuana, may also wish to consider sending notices to employees to remind them that such prohibitions and policies remain and will be enforced despite the passage of the Adult Use of Marijuana Act. Any policies should be attached to the notices and displayed at common work areas.

From a drug testing standpoint, given that marijuana is stored in fat cells, it can remain in a person's body for weeks. This, however, does not necessarily mean that a person is impaired. Employers should consider setting certain standards to determine impairment, if it wishes to make a distinction between impairment and marijuana use in its policies. For example, employers should consider setting the screening threshold for THC at 50 ng/ml or less, and should seek further medical and legal counsel on the standards that should be applicable based on the business and operational needs of the organization.

Employers should also consult with the drug testing facilities/medical review officers they utilize to make sure that they are using procedures that can adequately identify positive test results caused by second-hand marijuana exposure, rather than the employee's or prospective employee's own use of marijuana. With the legalization of marijuana, the possibility arises for more positive test results due to second hand exposure or claims by applicants/employees that their positive test results were caused by second-hand exposure.

For prospective job applicants, employers are reminded that California Labor Code §432.8 protects the rights of an applicant for employment or employee from disclosing information regarding a conviction related to the possession of marijuana where the conviction is more than two years old. This includes arrests that did not result in a conviction or referral to or participation in a pretrial or post-trial diversion program, as well as convictions that have been expunged, sealed or dismissed. Labor Code §432.7. Also, Labor Code §432.9 requires that a state or local agency shall not ask an applicant for employment to disclose information concerning the conviction history of the applicant until the agency has determined the applicant meets the minimum qualifications for the position as stated in any notice for the position.

For DOT or safety sensitive employees, employers should continue periodic training related to the use of Schedule I controlled drugs, including marijuana. Employees who are in these covered classifications should continue to be monitored through pre-employment, post-accident, random, reasonable suspicion, return-to-duty, and follow-up testing consistent with the DOT regulations.

It should be noted, however, for public employers with collective bargaining units, any material or substantive changes to existing policies or manuals will require notice to the affected bargaining units. Gov't Code §3504.05(a).[14] Depending upon the nature of the proposed change, the employer may face an obligation to meet and confer over the decision, or an obligation to meet and confer upon request by a bargaining unit regarding the effects of such proposals on the terms and conditions of employment. Gov't Code §3505. Therefore, employers should carefully review any existing policies and procedures; advise its bargaining units of any material or substantive changes; and provide them with an opportunity to request to meet and confer over the changes.

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[14] This reference is to the Meyers-Milias-Brown Act, which governs the labor relations at cities, counties and special districts. Similar bargaining obligations are found in the labor relations statutes governing school districts, community college districts, universities, courts, and the State of California.

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Summary Table of An Employer's Guide to Rights and Obligations

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Type	**Federal Law**	**State Law**	**Employer Rights and Obligations**	**Advisory**
Recreational Use	Federal law classifies marijuana as a Schedule I drug, and does not recognize the legal use of marijuana for recreational purposes. 21 USC § 812(c)(10). For employers with commercial (generally, Class A) drivers or safety-sensitive positions, DOT regulations require the testing for, and prohibit the use of, controlled drugs under 21 CFR §1308.11 Schedule I. This includes marijuana, cocaine, opiates, amphetamines and methamphetamines, and phencyclidine. 49 CFR §382.213(a).	Anyone over the age of 21 in California may possess, process, transport, purchase, obtain, or give away marijuana to persons 21 years of age or older, with limits. Health & Safety Code §11362.1(1). An individual cannot possess more than 28.5 grams of non-concentrated cannabis or eight grams of concentrated cannabis. Health & Safety Code §11362.1(2).	The law prohibits individuals to smoke or ingest marijuana or marijuana products in any public place, in locations where smoking tobacco is prohibited, within 1,000 feet or on the grounds of a school, day care center, or youth center while children are present, or while driving or operating a motor vehicle, boat, vessel, aircraft or other vehicle used for transportation. Health & Safety Code §11362.3(a). Employers can maintain a drug and alcohol free workplace, and are not required to permit or accommodate the use, consumption, possession, display, sale, transportation, or growth of marijuana in the workplace. Employers can continue to have policies prohibiting the use of marijuana by employees and prospective employees. Employers may continue to comply with other applicable federal or state laws, such as for employers who have commercial driving or safety-sensitive positions. Health & Safety Code §11362.45(f).	Employers can prohibit the smoking of marijuana at public buildings and/or any indoor workplace. School district or municipalities that operate childcare facilities or youth centers can also legally ban employees from smoking marijuana at the workplace while children are present. Employers may prohibit recreational marijuana usage at work, monitor employees for drug impairment, conduct pre-employment as well as other drug testing consistent with State and Federal law, and enforce existing policy concerning the use and possession of marijuana at the workplace.

Type	**Federal Law**	**State Law**	**Employer Rights and Obligations**	**Advisory**
Medicinal Use	Federal law classifies marijuana as a Schedule I drug, and does not recognize the legal use of marijuana for medicinal purposes. 21 USC § 812(c)(10). For employers with commercial (generally, Class A) drivers or safety-sensitive positions, DOT regulations require the testing for, and prohibit the use of, controlled drugs under 21 CFR §1308.11 Schedule I. This includes marijuana, cocaine, opiates, amphetamines and methamphetamines, and phencyclidine. 49 CFR §382.213(a).	Qualified patients may obtain and use marijuana for medicinal purposes where that medical use is deemed appropriate and has been recommended by a physician. Health & Safety Code §11362.5. A qualified patient may possess no more than eight ounces of dried marijuana. A qualified patient may also maintain no more than six mature or 12 immature marijuana plants. Health & Safety Code §11362.77(a).	A qualified patient with a documented medical need and as approved by their physician may legally obtain, possess, and cultivate marijuana to obtain medical relief for a "serious medical condition," which generally includes chronic or persistent medical symptom that either: i) substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990; or ii) if not alleviated, may cause serious harm to the patient's safety or physical or mental health. Health & Safety Code §11362.7(h). Employers are not required to accommodate the use of medicinal marijuana on the property or premises of any place of employment or during the hours of employment. Health & Safety Code §11362.785(a). Nor are employers required to reasonably accommodate disabled employees by permitting the employees to work under the influence of marijuana or by making an exception for such use in drug testing programs. A qualified patient cannot smoke marijuana in any place where smoking is prohibited by law, in or within 1,000 feet of the grounds of a school, recreation center, or youth center, on a school bus, while in a motor vehicle that is being operated or while operating a boat. Health & Safety Code §11362.79.	Employers are not required to allow the smoking or possession of marijuana in the workplace, even if it is for medicinal purposes. Employers may adopt and enforce reasonable policy related to a drug-free workplace, monitor employees for drug impairment, and conduct pre-employment as well as other drug testing consistent with State and Federal law. In the event that an employee requests the use of medical marijuana, employers should follow their own policies as well as existing law to determine whether the need for an interactive process arises, and whether the employer can accommodate any restrictions presented by the employee.