

State Medical and Recreational Marijuana Laws Chart: Overview

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A Chart outlining state law on medical and recreational marijuana (or marihuana) use. This Chart is limited to states that have relevant laws. It outlines which states have enacted relevant laws and characterizes those legal requirements, including citation to the source of law, characterization of individual rights, and discussion of any employer exemptions or obligations.

MEDICAL MARIJUANA

Many states have enacted laws that permit patients suffering from debilitating illnesses to access and use medical marijuana. Several states and the District of Columbia have also passed laws authorizing recreational marijuana use. Employers often have questions about these laws, especially because federal law continues to prohibit marijuana use, distribution, and possession for any reason. For example, the US Court of Appeals for the District of Columbia rejected a petition to change marijuana from a Schedule I drug under the Controlled Substances Act to a non-Schedule I drug, which would have allowed for the possibility of authorized medical marijuana use with a prescription (*Ams. for Safe Access v. Drug Enf't Agency*, 706 F.3d 438 (D.C. Cir. 2013)).

States treat medical marijuana differently, but there are some commonalities:

- **Medical marijuana registration cards.** Most states only allow access to medical marijuana through a medical marijuana registration or identification card. Although the rules vary by jurisdiction, these cards generally permit a patient to seek physician authorization and then obtain, use, and possibly grow marijuana for medicinal purposes. Cards are generally issued by a branch of state government, require payment of a fee, and are valid for one year.
- **Employer right to terminate or discipline employees.** Most state laws carve out exemptions for employers, authorizing prohibitions against use on premises and on-the-job intoxication. A few jurisdictions have produced case law supporting employers' rights to terminate employees for positive drug tests resulting from medical marijuana use.
- **Common restrictions on employers.** Some states, while authorizing termination or discipline for marijuana use or intoxication in the workplace, limit employers' right to test for marijuana or prohibit discrimination against individuals based on their having medical marijuana registration cards.
- **Limited judicial guidance.** Because most medical marijuana laws are relatively new, only a few states have had an opportunity for judicial interpretation, meaning there is little guidance on the medical marijuana laws.

This Chart provides an overview of states that have some form of medical or recreational marijuana authorization, citing the source of those laws, individual rights the laws created, and any employer exemptions or obligations. It addresses issues relevant to employers regarding employee and applicant use of medical or recreational marijuana but does not address state law dealing with medical marijuana users' caretakers. It does not address local or municipal laws.

For information about state laws on drug testing, see Drug Testing Laws: State Q&A Tool.

State	Primary Source of Law	Individual Rights	Employer Exemptions or Obligations
Alaska	Alaska Stat. Ann. §§ 17.37.010 to 17.37.080. Alaska also authorizes recreational marijuana use (see Recreational Marijuana).	Alaska offers medical marijuana registration cards for patients with debilitating medical conditions. No arrest, prosecution, or penalty for applying for an identification card (Alaska Stat. Ann. § 17.37.030(b)).	Employers are not required to accommodate medical marijuana use in any place of employment (Alaska Stat. Ann. § 17.37.040(d)(1)).
Arizona	A.R.S. §§ 36-2801 to 36-2819.	Arizona offers medical marijuana registration identification cards for patients with qualifying conditions who are likely to experience therapeutic or palliative benefits and who can support their requests with a physician's statement. No penalty or denial of rights or privileges for registered and qualified patients (A.R.S. § 36-2811). Employees cannot be punished for being medical marijuana identification card holders or for positive drug tests unless they used, possessed, or were impaired by marijuana at the place of employment or during working hours (A.R.S. § 36-2813).	Employers generally are authorized to take adverse employment actions for positive drug tests or failure to take drug tests (A.R.S. § 23-493.05). If the medical marijuana card holder employee "used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment," the employer can discipline or terminate the employee (A.R.S. § 36-2813). If employers have policies and drug testing programs consistent with state law, there is no employee cause of action for adverse employment action based on a good faith belief that an employee used, possessed, or was impaired by any drug while on the employer's premises or during the hours of employment (A.R.S. § 23-493.06). A federal district court held that the non-discrimination provision creates an implied private cause of action for discrimination claims and granted summary judgment to a plaintiff who was terminated based solely on a positive drug test (Whitmire v. Wal-Mart Stores Inc., 2019 WL 479842 (D. Ariz. Feb. 7, 2019)). Prohibition against employer discrimination (based on the card holder status or positive drug tests) is waived if the employer would lose financial or licensing benefits under federal law or regulations by declining to penalize the patient employee (A.R.S. § 36-2813(B)). Marijuana use that constitutes negligence or professional malpractice can result in civil, criminal, and other penalties. The law prohibits marijuana use in select environments (such as schools) and being under the influence when operating motor vehicles. (A.R.S. § 36-2802.)
Arkansas	Arkansas Medical Marijuana Amendment of 2016 (AR Const. Amend. 98, §§ 1 to 25).	The Arkansas constitution was amended to: <ul style="list-style-type: none"> ■ Legalize medical marijuana for 17 serious conditions. ■ Create a Medical Marijuana Commission. ■ Establish a regulated system of medical marijuana cultivation and dispensary sale. 	The amendment does not require an employer to accommodate: <ul style="list-style-type: none"> ■ The ingestion of marijuana in a workplace. ■ An employee working while under the influence of marijuana. (AR Const. Amend. 98, § 3(f).) 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 patient or designated caregiver (AR Const. Amend. 98, § 3(f)(3)(A)).

RECREATIONAL MARIJUANA

Currently, twelve states and the District of Columbia have passed laws either legalizing or decriminalizing the recreational use of marijuana. In 2013, the Department of Justice (DOJ) announced that it would not challenge state ballot initiatives in Colorado and Washington legalizing the possession and use of small amounts of marijuana under state law. However, the DOJ reaffirmed that marijuana remains an illegal drug under federal law and stated in its Guidance Regarding Marijuana Enforcement that it expects state and local governments to establish and enforce robust controls in their marijuana regulatory schemes to meet its federal objectives (see

Legal Update, Holland & Hart: DOJ Will Not Challenge Colorado and Washington State Marijuana Legalization Laws ([1-540-0506](https://www.hollandandhart.com/articles/2013/11/14/doj-will-not-challenge-colorado-and-washington-state-marijuana-legalization-laws))).

Attorney General Jeff Sessions rescinded the 2013 memorandum and other guidance and declared that marijuana activity is a serious crime. The Attorney General's one-page memorandum did not order the DOJ to take any specific action relating to prosecuting marijuana possession or use, but instructs federal prosecutors to "weigh all relevant considerations" in deciding which cases to prosecute (see Memorandum for All United States Attorneys re Marijuana Enforcement, January 4, 2018).

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