

CHECKLIST | LEGALIZED MARIJUANA AND EMPLOYMENT

Presented by ToughComp

When it comes to legalized marijuana, federal and state laws remain largely at odds. While all marijuana use remains illegal under federal law, most states have enacted laws that allow certain uses of marijuana. Many of these laws either directly restrict employers or implicate provisions of other laws that may restrict employers; moreover, it's not always clear whether an employer may take adverse employment action against an employee based solely on certain factors involving legalized marijuana.

Relying solely on federal laws could be problematic when developing workplace policies to navigate legalized marijuana in employment. Federal and state laws may affect employers that test employees or applicants for marijuana. Employers should take a close look at the details of all applicable state and local laws before deciding how to deal with these issues.

This checklist outlines general steps for employers to consider when developing workplace policies for legalized marijuana. Complying with state and local marijuana-related laws and testing requirements can be complex and may involve additional steps depending on the facts of a specific situation. Due to these complexities, employers are encouraged to seek legal counsel to address specific issues and concerns.

State and Local Laws to Consider	Completed
<p>Become acquainted with the following general categories of state and local laws before establishing or implementing any drug testing policy that includes testing for marijuana:</p> <ul style="list-style-type: none">• Legalized recreational marijuana laws• Legalized medical marijuana laws• Drug testing laws• Lawful activities laws• Disability discrimination laws• Other anti-discrimination laws• Workers' compensation laws• Unemployment laws• Workplace safety laws• Privacy laws• Case law	<input data-bbox="1292 1350 1318 1377" type="checkbox"/>

Evaluating State and Local Laws	Yes	No
<p><i>The following is a list of general questions employers should ask and determine the answer to when reviewing state laws for legalized marijuana and employment laws for purposes of establishing a workplace drug testing policy.</i></p> <p><i>If you answered "Yes," to any of the following questions, ensure that the organization's workplace drug testing policy accurately reflects the state or local law.</i></p>		
Do state or local legalized marijuana or related laws:		
• Provide employment protection for marijuana users?	<input type="checkbox"/>	<input type="checkbox"/>
• Provide protections or guidance for employers?	<input type="checkbox"/>	<input type="checkbox"/>
• Address off-duty marijuana use?	<input type="checkbox"/>	<input type="checkbox"/>
• Create or allow causes of action against employers for adverse actions taken against an individual based on off-duty marijuana use?	<input type="checkbox"/>	<input type="checkbox"/>
• Prohibit employers from taking specific actions when an individual tests positive for marijuana?	<input type="checkbox"/>	<input type="checkbox"/>
• Require employers to take specific actions when an individual tests positive for marijuana?	<input type="checkbox"/>	<input type="checkbox"/>
• Address how to determine whether an individual is impaired by or under the influence of marijuana?	<input type="checkbox"/>	<input type="checkbox"/>
• Require an established workplace drug policy?	<input type="checkbox"/>	<input type="checkbox"/>
• Appear in any court decisions addressing employment issues?	<input type="checkbox"/>	<input type="checkbox"/>

Outlining the Details of a Workplace Drug Testing Policy	Completed
<p><i>When initially determining the details and structure of any workplace drug testing plan, an employer will first need to make decisions on the following:</i></p> <p><i>Note that under virtually all state legalized marijuana and related employment laws, employers may conduct drug testing (though some states restrict testing for marijuana); prohibit marijuana possess and use in the workplace; and prohibit employees from being impaired or under the influence of marijuana in the workplace or during working hours.</i></p>	
<p>Who will be tested?</p> <ul style="list-style-type: none"> • Employees • Applicants 	<input type="checkbox"/>

<p>When and why will individuals be tested?</p> <ul style="list-style-type: none"> • During the interview process (testing for marijuana is prohibited in New York City and the District of Columbia) • After extending an offer of employment to applicants • At random times • After a workplace accident • Upon the employer’s reasonable suspicion of impairment 	<input type="checkbox"/>
<p>What drugs will be tested for?</p> <ul style="list-style-type: none"> • Include marijuana in all testing. • Exclude marijuana in all testing. • Exclude applicants from all marijuana testing. • Exclude applicants from marijuana testing until after an offer is extended. • Exclude marijuana from testing of individuals who work in or are applying for non-safety-sensitive positions. • Other details. 	<input type="checkbox"/>
<p>What kind of samples will be collected?</p> <ul style="list-style-type: none"> • Urine • Blood • Hair • Breath • Other 	<input type="checkbox"/>
<p>What procedures will be used for collecting samples?</p> <ul style="list-style-type: none"> • On-site collection • Off-site collection 	<input type="checkbox"/>
<p>Which laboratory will be used for testing?</p> <ul style="list-style-type: none"> • Ensure it uses compliant procedures for handling samples. • Ensure it uses compliant procedures for testing samples. • Ensure it uses compliant protocols for testing. • Ensure it has any required certifications or licensing. 	<input type="checkbox"/>
<p>What consequences will be imposed if an employee or applicant refuses to participate in the testing?</p> <ul style="list-style-type: none"> • Warning • Discipline • Termination • Offer of assistance with addiction recovery 	<input type="checkbox"/>

- Other

The best practices for employers that conduct marijuana drug testing will depend heavily on the applicable state and local laws. Therefore, it's essential that employers are familiar with these laws. Implementing a written policy on employee drug use and testing, even if no applicable law requires it, can establish expectations and helps avoid questions about how to handle situations as they occur.

Contact ToughComp today for more information about legalized marijuana in the workplace.

