



# Marijuana Considerations by State

## DELAWARE

(Updated as of May 2021)

### Legal Status of Marijuana

<b>Medical Marijuana Law</b>	Yes
<b>Recreational Marijuana Law</b>	
<b>No broad laws legalizing marijuana*</b>	

\*Marijuana is either totally illegal, or there may be laws decriminalizing possession, or use of marijuana, or, the state may have a CBD law legalizing THC at a level constituting marijuana-derived CBD.

**Understanding this report:** The objective of this state report is to identify direct factors that impact employment rights, protections and obligations as they relate to an employee’s use of marijuana.

In some cases, information can be confusing or even appear contradictory. This underscores the necessity of having legal counsel, specialized in marijuana and all related state laws, assist the employer in determining impactors/influences. Further, it is wise to have a professional experienced in drug-responsible workplace programs (i.e., drug-free workplace program [DFWP] consultant) assist in the development of corporate policies and operational practices. (See the NDS article, *Finding Answers to Your Questions about Marijuana in the Workplace.*)

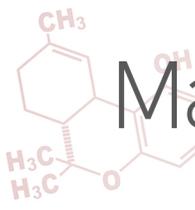
The subtitle categories within each state report are standardized. Because the marijuana laws and other laws directly associated to dealing with employee use of marijuana are different in every state, there may be categories within a state’s report that have no information. This indicates there has been no specific information found.

Lastly, where there are quotation marks, the language is directly from published law cited just before the quote. The quoted words are significant, but it will benefit the reader to review the information in context (go to the law) and in relation to other laws (e.g., disability discrimination, workers’ compensation, unemployment law). Additionally, there may be case decisions in a state, that set precedence and clarify or further detail the operational meaning of a law for an employer.

### FROM THE STATE

#### Significant

- Possessing or engaging in the medical use of marijuana is prohibited when (Delaware Code 16-49A-4901A (4)) “Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana, except that a registered qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana.”



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- Unless in conflict with federal funding or contracts, an employer may not discriminate against an applicant or employee for being a registered medical marijuana patient or for a registered patient having a positive marijuana drug test.
- An employer may discipline a qualifying medical marijuana patient for use at work or for working under the influence of marijuana.
- Testing positive alone does not constitute grounds for not hiring, termination or discipline unless the patient used, possessed or was impaired by marijuana on premises or during hours of employment.

## Testing

- A positive test for marijuana will not constitute being “under the influence.”

## Hiring/Termination

- Testing positive alone does not constitute grounds for not hiring, termination or discipline unless the patient used, possessed or was impaired by marijuana on premises or during hours of employment.

## Discipline

- Testing positive alone does not constitute grounds for not hiring, termination or discipline unless the patient used, possessed or was impaired by marijuana on premises or during hours of employment.

## Use/Possession

- Smoking is permitted except for in any public place or form of transportation.
- Physicians can elect to recommend a CBD-Rich card to be issued for a patient but only for the treatment of anxiety. These patients are limited to purchasing products containing low concentrations of THC.
- Additionally, physicians can certify a patient for a Compassionate Use Card if s/he did not qualify for medical marijuana treatment. This authorizes the use of medical marijuana under specific conditions.

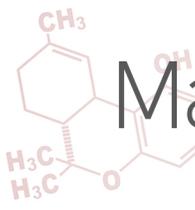
## Other Impacting Laws (e.g., drug testing, workers’ compensation, unemployment)

- An injury is non-compensable for workers’ compensation benefits if the injury is a result of the employee’s own intoxication, but the burden of proof shall be on the employer.
- Apply the **Checklist of Impacting Issues to Research** provided by NDS for additional state laws and issues that can relate to and/or impact your operations regarding employee use of marijuana.

## Miscellaneous

### Sources (e.g., Bill Number, Authority)

- Delaware SB 170 – CBD-Rich/medical marijuana card
- Delaware Code 16-49A-4901A – Medical marijuana



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- Delaware Code 19-23-2353 – Workers' compensation related

DISCLAIMER: This resource, developed by *Working Partners*®, is meant for educational purposes only. It is provided with the understanding that those involved in the resource are not engaged in rendering legal counsel. An experienced attorney with proven knowledge about these issues should be consulted for legal advice. In addition, an experienced drug-free workplace professional should be relied upon for assistance on operational issues for your company's program.