

Marijuana Considerations by State

NEW YORK

(Updated as of May 2021)

Legal Status of Marijuana

Medical Marijuana Law	Yes
Recreational Marijuana Law	Yes
No broad laws legalizing marijuana*	

Recreational Marijuana: Until regulations are promulgated by New York, buying and selling of marijuana beyond the medical marijuana system won't be legal (could take a year or two). Growing is also not legal for at least several months (3/2021). However, the antidiscrimination employment provisions expanded via MRTA are in effect (see below).

**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.***)

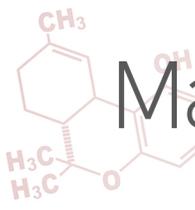
The subtitle categories within each state report are standardized. Because the marijuana laws and other laws directly associated to dealing with employee use of marijuana are different in every state, there may be categories within a state's report that have no information. This indicates there has been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

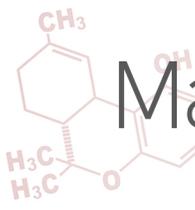
- New York City – Effective May 10, 2020 prohibition of pre-employment drug testing for marijuana or derivatives except as otherwise provided by law with exceptions for specific positions (i.e., police officers, supervisors of children, etc.). This list was expanded and clarified by listing types of positions that fit the exception which became effective July 24, 2020.
- Prohibits employer from refusing to hire, terminating, or otherwise penalizing an employee solely based on their status as a certified medical marijuana patient.



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- Employers may prohibit employees from working while impaired by marijuana.
- Employers with four or more employees must also provide reasonable accommodations to medical marijuana users. Unless such action that would cause a violation of federal law or the loss of a federal contract or funding.
- **IMPORTANT:** Pursuant to the Compassionate Care Act (CCA), "Certified Patients" authorized to use medical marijuana are deemed to have a disability under the New York State Human Rights Law (NYSHRL). In theory it appears that employers must reasonably accommodate use (depending upon the particular circumstances) of an employee who is a "Certified Patient" as a result of his/her deemed disability. The Compassionate Care Act specifically states that "Certified Patients" shall not be subject to, "...disciplinary action by a business . . . solely for the certified medical use or manufacture of..." marijuana. Therefore, an employer could be subject to a discrimination claim if he or she fires or disciplines an employee who is legally consuming or manufacturing marijuana.
- (3/2021) New York Marijuana Regulation & Taxation Act (MRTA) legalized recreational adult use of marijuana but makes it understood that it does not intend to limit the authority of employers, "to enact and enforce policies pertaining to cannabis in the workplace."
 - MRTA also revised the New York Labor Law and now provides employment protections against being fired for a positive marijuana test result for consumption that happened before or after work hours as long as it happened off premises and did not involve employer equipment or property unless there are specific articulable symptoms that impede performance or the position requires federal clearance.
 - Under MRTA employers can prohibit use and possession and can continue testing (except New York City) for marijuana.
 - MRTA amends the New York Labor Law § 201 (off-duty use law) and also provides caveats to the anti-discrimination provision as it relates to employers taking adverse employment action when the employee is impaired while working defined as, "the employee manifests specific articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, or such specific articulable symptoms interfere with an employer's obligation to provide a safe and healthy work place, free from recognized hazards, as required by state and federal occupational safety and health law."

However, New York's Compassionate Care Act, as it relates to medical marijuana patients, remains in effect (see above).



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Testing

- Although New York does not have drug testing per se laws, there are other laws which can seriously impact employer drug testing protocols.

Hiring/Termination

- See **Significant** above.

Discipline

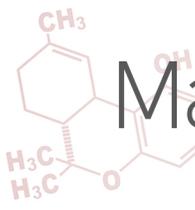
- See **Significant** above.
- Due to a 2020 court ruling, a company should seek knowledgeable, state-specific legal counsel prior and plan to engage in an interactive dialogue and consider any reasonable accommodations prior to terminating or taking an adverse action against an employee who is a medical marijuana patient.

Use/Possession

- New York's Marijuana Regulation & Taxation Act (MRTA) amends language of the New York Labor Law § 201 which addresses off-duty use of consumable products, and specifically includes the use of cannabis in the employment context.
- As a result of the New York Marijuana Regulation & Taxation Act (3/2021), legalization of recreational adult use, unless prohibited by local laws, smoking (formerly prohibited), is legally permitted wherever tobacco can be smoked under New York's Clean Indoor Air Act.
- Medical marijuana is legally available as oils, ointments, capsules, powders, vaporizers and some limited edibles. Dried flower and an expanded permissibility of edibles may result from MRTA (3/2021).
- Cannot vape in any public place or commercial space where public health law prohibits smoking.
- Illegal in all motor vehicles.

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

- Workers' compensation claim denial - Although an injury is not compensable when intoxication on duty is the sole or primary cause of the injury, note that unless there is substantial evidence to the contrary, it will be assumed that an injury is not caused solely or primarily by the effects of drugs.
- The state's Workers' Compensation Board determined that medical marijuana is reimbursable if certain criteria are met.
- As per 3/2021 and the legalization of recreational adult use of marijuana, there is an automatic expungement or resentencing for anyone who was convicted of a marijuana crime that would now be legal.
- 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.



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Miscellaneous

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

- New York Public Health Law 33-5A et al. – Medical marijuana
- N.Y. Marijuana Regulation & Taxation Act – Recreational marijuana
- N.Y. New York Labor Law § 201-d – off duty use of consumable products
- N.Y. Labor Law 18-7-593(3) – Unemployment related
- N.Y. Workers' Compensation Law 2-10 & 21 – Workers' compensation related
- N.Y. Public Health Law § 3369 – Workers' compensation related
- N.Y. State Human Rights Law (NYSHRL) – Disability related
- New York City Human Rights Law (NYCHRL) – Disability related
- Con Edison vs. Kathleen Gordon – NY Supreme Court Decision, Disability 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.