

Marijuana Considerations by State

TENNESSEE

(Updated as of January 2021)

Legal Status of Marijuana

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

**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.*)

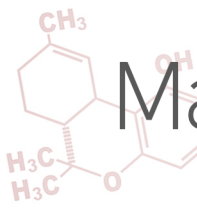
The subtitle categories within each state report are standardized. Because the marijuana laws and other laws directly associated to dealing with employee use of marijuana are different in every state, there may be categories within a state’s report that have no information. This indicates there has been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

- Marijuana for medical or recreational use is illegal in Tennessee, except for qualifying patients who need CBD products per state requirements and as part of (TN SB 2531) “... a clinical research study on the treatment of intractable seizures when supervised by a physician practicing at ... a university having a college or school of medicine.”
 - Under Tennessee SB 2531, CBD products must be properly labeled and contain less than 0.9% THC for intractable seizures.

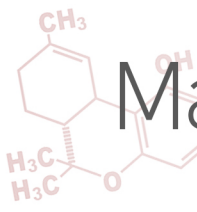


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- Under Tennessee SB 280 (2015), patients must acquire state-legal CBD in the U.S., but outside of Tennessee.
- There are drug testing and reporting requirements for employers with 5 or more employees providing construction work to state or local governments and for employers in the licensed healthcare industry.
- Tennessee has a voluntary drug testing law that, although not required, if an employer elects to comply, they will qualify for a workers' compensation premium discount. It does require testing for marijuana, as well as many other detailed protocols (i.e., giving 60 days' notice before testing commences, training and education, retention of records, timing for rebuttal, duration of follow-up testing).
- Tennessee has unemployment and workers' compensation voluntary laws that, although not required, with compliance, an employer has greater latitude to deny claims.

Testing

- It is unclear whether employers are permitted to use oral fluids testing when participating in Tennessee's premium discount program for workers' compensation. It is necessary for an employer to check with the state of Tennessee to determine whether TN Code Ann. 50-9-101:115 and TN Comp. Rules & Reg. 0800-02-12-.01 et seq. will now accept oral fluid specimen as valid.
 - Tennessee's voluntary law for workers' compensation premium reduction and employer protections (Tennessee Code Ann. 50-9-101:115) calls for testing, (Section 50-9-107) "All specimen collection and testing for drugs ... under this chapter shall be performed in accordance with the procedures provided for by the United States department of transportation rules for workplace drug ... testing compiled at 49 CFR part 40" which designates urine for drug testing. (Tennessee Code Ann. 50-9-103) states that specimen means, "... tissue, fluid or a product of the human body capable of revealing the presence of alcohol or drugs or their metabolites."
 - In the subsequent law, employers who choose to take advantage of the voluntary law, Tennessee Comp. Rules & Regs. 0800-01-12-.06(4), "If an employee is unable to provide a urine specimen when requested, the United States Department of Health and Human Services mandatory guidelines on fluid administration and for alternative oral specimen collection shall be followed." However, in (Tennessee Rule 0800-02-12-.07(4), "As technology develops new testing methods, covered employers may rely on the results of those methods which have been approved by the Substance Abuse & Mental Health Services Administration (SAMHSA)."
 - Per the Oral Fluid Mandatory Guidelines effective January 1, 2020, SAMHSA has expanded to include standards, procedures and protocols for oral specimen.
- See **Other Impacting Laws** below.



Marijuana Considerations by State

Hiring/Termination

Discipline

Use/Possession

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

- It is illegal for an individual to drive or be in physical control of a vehicle while under the influence of any intoxicant, marijuana, controlled substance, drug or combination thereof.
- Tennessee has unemployment and workers' compensation voluntary laws that, although not required, with compliance, an employer has greater latitude to deny claims.
- If an employee refuses a drug test when required or has a positive drug test and is discharged for misconduct, she or he will be ineligible for unemployment benefits.
- If an employer is operating a drug-free workplace per the state's voluntary drug-free workplace/drug testing program, they will have the benefit of presumption that an injury from an accident was proximately caused by the employee's drug use.
- 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)

- Tennessee SB 2531 – CBD related
- TN SB 280 – CBD related
- Tennessee Code Ann. 50-9-101 to 115 – Drug testing related
- Tennessee Comp. Rules & Reg. 0800-02-12-.01 et seq. – Drug testing related
- Tennessee Code Ann. 50-7-303 – Unemployment related
- Tennessee Code Ann. 50-6-110 – 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.