



Marijuana Considerations by State

VIRGINIA

(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.***)

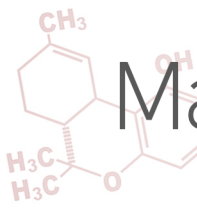
The subtitle categories within each state report are standardized. Because the marijuana laws and other laws directly associated to dealing with employee use of marijuana are different in every state, there may be categories within a state’s report that have no information. This indicates there has been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

- Only low-THC medical cannabis extractions (oils, tinctures, creams, gels, capsules, patches, and more, but not cannabis flower) are allowed and a qualifying individual has an affirmative defense for possession, however it does not prevent arrest, charges, and prosecution.
 - Qualified persons have an affirmative defense for possession no greater than 10 milligrams of CBD or THC-A oil, if it meets the state’s requirement of at least 15% CBD and no more than 5% THC



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(marijuana-derived), and they also have in their possession a written certification (their qualified medical practitioner's recommendation form).

- As the new CBD-related laws (HB 1251 and SB 1557) fully take effect in 2019, patients will have access to products beyond just oils and, similar to compounding pharmacies, there will be access to capsules, topicals, lozenges, lollipops, and suppositories in dosages with up to 10 milligrams of THC.
- CBD-related laws signed by the Governor in 2020:
 - A person possessing CBD with a high enough THC factor that it qualifies for a positive test under an employer's program, shall not be prosecuted for simple possession of marijuana.
 - Under a decriminalization law:
 - Employers and educational institutions are prohibited from asking employment applicants to disclose information related to arrest, criminal charge or conviction of marijuana. Further, these criminal histories will not be reported to the Central Criminal Records Exchange. This is inconsistent Federal rules for contractors or grantees with Federal contracts in excess of \$100,000.00.
 - However, if a violation occurs while operating a commercial motor vehicle, it will be reported to the Department of Motor Vehicles and shall be included on the individual's driving record.
- Virginia 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 requires the employer follow drug testing policy and program specifications issued by the insurer.
- The mining industry has drug testing requirements in Virginia.
- Virginia has unemployment and workers' compensation voluntary laws that, although not required, with compliance, an employer has greater latitude to deny claims.

Testing

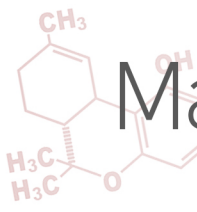
Hiring/Termination

- See [Other Impacting Laws](#) below.

Discipline

Use/Possession

- Possessing, consuming, or selling cannabis flower, hashish or cannabis extracts is illegal and patients may assert affirmative defense only for possession.



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- Consuming cannabis products in public places is illegal.
- Only up to a dose of 10 milligrams of low-THC (at least 15% CBD and no more than 5% THC) medical cannabis is permitted.
- When HB 1251 is effective, any formulation of processed cannabis plant extract, but not whole plant cannabis, is permitted. These available products will be similar to those available at compounding pharmacies like capsules, topicals, lozenges, lollipops, and suppositories in up to 10 milligrams of THC.
- Smoking anywhere is prohibited.
- When driving, medical cannabis products must be in sealed containers away from driver and passengers in motor vehicles.

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

- An employee is disqualified for unemployment compensation if she or he was discharged for misconduct, including a confirmed positive drug test for a non-prescribed controlled substance (which would include marijuana).
- An employee is disqualified for workers' compensation if at the time of the injury, she or he tests positive for a non-prescribed controlled substance on a qualifying test.
- 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)

- Virginia HB 1251 – CBD related
- Virginia SB 1557 – CBD related
- Virginia SB 1015 – CBD related
- Virginia SB 972 – CBD related
- Virginia Code Ann. 65.2-813.2 – Drug testing law
- Virginia Code Ann. 60.2-618 (2)(b) – Unemployment related
- Virginia Code Ann. 65.2-306 – 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.