

# Marijuana Considerations by State

## OREGON

(Updated as of January 2020)

### Legal Status of Marijuana

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

*\*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, [Workplace Considerations For Marijuana Use.](#))

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.

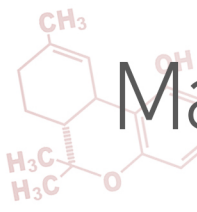
Lastly, where there are quotation marks, the language is directly from published law cited just before the quote. The quoted words are significant, but it will benefit the reader to review the information in context (go to the law) and in relation to other laws (e.g., disability discrimination, workers’ 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

#### Employer Concerns

#### Significant

- Nothing is the law requires accommodation in the workplace.
- Case decision: If using medical marijuana helps an individual mitigate the effects of a health condition, he is no longer hindered by that condition and therefore it is not a disability and thereby disability laws offer no protection.



# Marijuana Considerations by State

- Medical marijuana: Employers may fire or discipline employees for testing positive for marijuana, even if the use was off duty and with a valid medical marijuana card.
- Recreational marijuana: The law imposes no restrictions on employers.
- “Controlled substance” defined in Oregon’s unemployment law (ORS 475.005), “Means a drug or its immediate precursor classified in Schedules I through V under the federal Controlled Substances Act...” and (ORS 475.035), “If a substance is an ingredient of a controlled substance, the ingredient shall be considered to be in the same schedule as that controlled substance...”
- “Under the influence” is defined in Oregon’s unemployment law as (ORS 657.176(13)), “...when the level of ... marijuana or unlawful drugs present in the individual’s body exceeds the amount ... prescribed in the employer’s reasonable written policy...”.

## Testing

### Hiring/Termination

- Medical marijuana: Employers may fire or discipline employees for testing positive for marijuana, even if the use was off duty and with a valid medical marijuana card.
- Recreational marijuana: The law imposes no restrictions on employers.

### Discipline

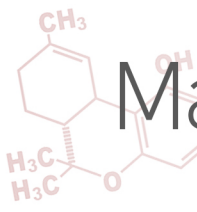
- Medical marijuana: Employers may fire or discipline employees for testing positive for marijuana, even if the use was off duty and with a valid medical marijuana card.
- Recreational marijuana: The law imposes no restrictions on employers.

### Use/Possession

- Smoking is permitted.
- Can legally consume medical marijuana on private property - no public consumption.
- Recreational consumption prohibited in public places including bars, restaurants, in a parked car in public view or for the driver or passenger in a motor vehicle.
- Prohibited for driver or passenger of a motor vehicle.

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

- There are two laboratory-related laws that can impact an employer’s drug testing operations.



# Marijuana Considerations by State

- There is an unemployment related voluntary law with drug testing requirements. Although not required, this statute provides greater latitude for an employer to deny unemployment claims. For example, the employee is disqualified from benefits if he or she doesn't comply with a reasonable written policy that addresses employee use, sale, possession or effects of drugs in the workplace. It also addresses last chance agreements and compliant participation in a rehabilitation program.
- Workers' compensation claim denial - An injury is not compensable if the major contributing cause is proven by a preponderance of evidence to be the employee's unlawful consumption of a controlled substance unless the employer permitted, encouraged or had actual knowledge of the consumption.
- Apply the [Checklist of Impacting Issues for Employee Use of Marijuana](#) 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)

- Oregon Rev. Stat. 475B et al. – Medical marijuana
- Washburn v Columbia Forest Products, Inc. (2006) SC S52254 – Medical marijuana related
- Oregon Rev. Stat. 475B et al. – Recreational marijuana
- Oregon Rev. Stat. 438.010, Oregon Rev. Stat. 438.435 – Drug testing related
- Oregon Rev. Stat. 657.176(13) – Unemployment related
- Oregon Rev. Stat. 656.005(7)(b)(C) – Workers' compensation related
- <https://www.oregon.gov/odot/dmv/docs/vcb813.pdf> – Driving under the influence

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.