

# Marijuana Considerations by State

## WEST VIRGINIA

(Updated as of January 2020)

### Legal Status of Marijuana

<b>Medical Marijuana Law</b>	Yes - but no projected date yet for operationalization
<b>Recreational Marijuana Law</b>	No
<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.

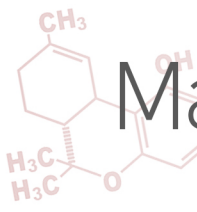
Lastly, where there are quotation marks, the language is directly from published law cited just before the quote. The quoted words are significant, but it will benefit the reader to review the information in context (go to the law) and in relation to other laws (e.g., disability discrimination, workers’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

- Although medical marijuana law has been passed in West Virginia, it is not available for patients *except* terminally ill patients who are able to take advantage of reciprocity agreements with others states in order to receive medical cannabis.



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- Under West Virginia’s law, an employer is not required to accommodate use on workplace premises.
- West Virginia’s medical marijuana law allows the employer to prohibit tasks that could be life-threatening or result in risks to public health or safety while under the influence of marijuana.
- An employer may not discharge, refuse to hire, or otherwise discriminate solely based on an individual’s status as a certified medical cannabis patient.
- An employer may discipline an employee for being under the influence of medical cannabis when (West Virginia Code Chapter 16A-15-4(b)(2)) “...the employee’s conduct falls below the standard of care normally accepted for that position.”
- Employers are not required to take any action that would violate federal law.
- West Virginia has very complicated drug testing statutes all of which include testing for marijuana. They have a mandatory statute that conflicts with existing case law decisions, they mandate testing for certain industries, and they have unemployment and workers’ compensation laws that contain their own drug testing requirements.

## Testing

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## Hiring/Termination

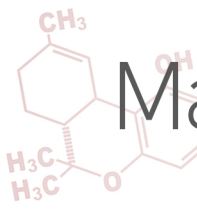
- An employer may not discharge, refuse to hire, or otherwise discriminate solely based on an individual’s status as a certified medical cannabis patient.

## Discipline

- An employer may discipline an employee for being under the influence of medical cannabis when (West Virginia Code Chapter 16A-15-4(b)(2)) “...the employee’s conduct falls below the standard of care normally accepted for that position.”

## Use/Possession

- Smoking marijuana is prohibited.
- Allowable forms include pills, oil, gels, creams, ointments, tincture, liquid, dermal patch, medically appropriate forms for vaporization or nebulization, *excluding dry leaf or plant* unless later deemed acceptable under rules adopted by the W.V. Bureau for Public Health. Edibles cannot be sold, but can be produced and consumed by patients at home.



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- Consumption is prohibited in any public place and illegal to perform any task under the influence of cannabis which would constitute negligence, such as the operation of any motor vehicle, aircraft, or watercraft.

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

- A person is guilty of DUI if they operate a vehicle under the influence of marijuana or permit their vehicle to be driven by someone under the influence. Medical marijuana patients may not drive if they are at or over a level of 3 ng/ml THC.
- West Virginia's unemployment law prohibits adulteration or manipulation to defraud a drug test or refusing a test by an individual in a safety-sensitive position.
- An employee who is discharged for gross misconduct, including reporting to work under the influence without a valid prescription or being under the influence or intoxicated at work, trying to cheat a drug test, and more, will be disqualified for unemployment benefits.
- An injury is not compensable if a blood test administered at the time of the injury was positive for either on or off the job use of a nonprescribed controlled substances as defined in the West Virginia Uniform Controlled Substances Act.
- 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)

- West Virginia's SB 386 – Medical marijuana
- Code of West Virginia 16A- 3-3, 15-4 – Medical cannabis related
- West Virginia Code 21-3E-1 et al. – Drug testing related
- *Twigg v. Hercules Corp.* (1990) Supreme Court of Appeals of West Virginia – Case decision, drug testing related
- West Virginia Code 21A-6-3(2) – Unemployment related
- West Virginia Code 23-4-2 – 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.