

# Compliance & Cannabis in the Workplace: Navigating the Changing Landscape of Legalization



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## Disclaimer

The contents of this presentation are not intended to be, or be a substitute for, legal advice.



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## Compliance in Transformation

- 33 U.S. states/territories/districts have legalized some form of cannabis for medical purposes

As of August 2019, Medical Marijuana Is Legal In:				
Alaska	District of Columbia	Massachusetts	New Mexico	Rhode Island
Arizona	Florida	Michigan	New York	Vermont
Arkansas	Guam	Minnesota	North Dakota	Utah
California	Hawaii	Missouri	Ohio	Washington
Colorado	Illinois	Montana	Oklahoma	West Virginia
Connecticut	Louisiana	Nevada	Oregon	Puerto Rico
Delaware	Maine	New Hampshire	Pennsylvania	
	Maryland	New Jersey		



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## Cannabis in Transformation

- 11 U.S. states and the District of Columbia have legalized some form of cannabis for adult-use/recreational purposes

As of August 2019, Recreational Marijuana Is Legal In:		
Alaska	D.C.	Nevada
California	Illinois	Oregon
Colorado	Maine	Vermont
	Massachusetts	Washington
	Michigan	



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# Cannabis in Transformation

## Low-THC states

As of August 2019, Low-THC Form Cannabis is Legal for Medical Use in:

Alabama	Massachusetts	Ohio
Alaska	Michigan	Oklahoma
Arkansas	Minnesota	Oregon
California	Mississippi	Pennsylvania
Colorado	Missouri	Rhode Island
Connecticut	Montana	South Carolina
Delaware	New Hampshire	Tennessee
Florida	New Jersey	Texas
Georgia	New Mexico	Utah
Hawaii	New York	Vermont
Indiana	Nevada	Virginia
Iowa	North Carolina	West Virginia
Kentucky	North Dakota	Washington
Louisiana	Oklahoma	Wisconsin
Maine	Oregon	Wyoming
Maryland		



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# 2018 Farm Bill

- The Agricultural Improvement Act of 2018 “2018 Farm Bill” legalizes hemp with a delta-9 THC content up to .3% on a dry weight basis
- Hemp is the plant *cannabis sativa L.*
- Fed law was that *any amount* of THC was a controlled substance under the Controlled Substances Act; now up to 0.3% THC is *not a controlled substance*



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What does this mean for your corporate compliance and ethics program?

## Dealing with Cannabis in the Workplace



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## Real-World Scenario

A Colorado manager flies to Virginia to interview a potential hire. While driving a car rented by the company, the manager is rear-ended while stopped at a light in Virginia. The manager is injured and is transported to a local Virginia hospital. The manager's urine is tested as a routine, post-accident measure for workers' compensation and it tests positive for THC metabolite because the manager legally consumes recreational cannabis in Colorado.

Will state law in Colorado require your company to pay workers' compensation? Will your insurance carrier cover the medical or loss of income payments? Can the company legally terminate the employee for consuming cannabis? Should the employee be terminated? Does it matter if it is an at-fault or no-fault accident?

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## Real-World Scenario

Is the scenario different if the Colorado manager consumed only CBD oil with less than 0.3% THC – in other words, a product that is not federally illegal?

**BIG QUESTION:** How will employers know what employees consumed when the drug tests we typically rely on do not indicate the source of the metabolite?



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## Emerging Risk Areas

- ❑ Employee protections: Can you refuse to hire or terminate employees who use cannabis for medical purposes? Recreational purposes?
- ❑ Do terminations trigger state disability or discrimination laws?
- ❑ Does your employer receive federal grant funds or participate in other programs that require compliance with a Drug-Free Workplace?
- ❑ Do you have employees with federal certifications? DOT licenses? Security clearances? Pilots licenses?
- ❑ Do you have employees who live in a state where they lawfully use medical cannabis and the employer requires them to travel to states where such use is illegal? What are the reasonable accommodations then?



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## Action Steps

- ❑ Oversight – someone in your company needs to be the “point” on this
- ❑ It could be HR, Risk, Workers' Comp, Legal, Compliance - but the person needs resources to stay up to date on this rapidly changing legal landscape



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## Action Steps

- ❑ Policies & Procedures: Re-read your Code of Conduct in light of legalization
- ❑ Revisit all policies that touch on use of medications and “illegal drugs” for consistency
- ❑ Revisit the Employee Handbook
- ❑ Revisit drug testing policies



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## Action Steps

- ☐ Risk Assessment: Have a thorough discussion with executive management about specific risk areas and update your legal risk assessment
- ☐ Drug-Free Workplace? Drug-Free School Zone?
- ☐ State employee protection laws?
- ☐ Federal certifications/licenses/approvals?
- ☐ What reasonable accommodations are we prepared to provide?
- ☐ How does legalization affect our drug-testing programs: pre-employment, post-accident?
- ☐ How does legalization affect our workers' compensation coverage or the actions we must or must not take after accidents? Is any of this at odds with state law?



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## Action Steps

- ☐ How does the legalization of hemp and CBD affect our current policies and procedures?
- ☐ What further training and education is required for our HR personnel and compliance personnel to understand and manage these risk areas?
- ☐ Does our corporate counsel have the necessary resources, knowledge, or reach-back capability to competently address these emerging issues? How do we find qualified legal counsel on these issues?
- ☐ What are the ramifications of legalization on our vendors and subcontractors? Are we required to flow down Drug-Free Workplace clauses?
- ☐ Are any new procedures in qualifying subcontractors or consultants indicated due to legalization?



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## Action Steps

- ☐ Training & Education – what training is necessary to assist with management of the new risk areas?
  - ☐ Do Legal/Compliance/HR/Safety staff need further training in order to identify and manage the risks?
  - ☐ Do employees need to be trained on what is and is not okay when it comes to consumption of cannabis?
  - ☐ Do managers need guidance on when to request support or advice from HR/Legal/Risk Management/Safety?



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## Action Steps

- ☐ Monitoring & Auditing – what existing processes may need to be amended to adequately address new risks?
  - ☐ Do drug testing processes adequately accommodate legalized consumption of cannabis?
  - ☐ Do the processes in place to monitor for compliance with discrimination laws adequately accommodate medical cannabis use? Is your employer even required to accommodate consumption of cannabis? In what jurisdictions?
  - ☐ Do managers need guidance on when to request support or advice from HR/Legal/Risk Management/Safety?
  - ☐ Do you have a reliable individual monitoring the status of laws and regulations in this area? In-house? Outside counsel?
  - ☐ How will your company respond to reports that an employee has consumed, does consume, or will consume cannabis during off-duty time? During work time?



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## Action Steps

- Investigations – what reports of cannabis consumption are worthy of investigation? Who will be responsible for investigating or deciding when an investigation is indicated?
- How will we ensure our investigations do not violate anti-discrimination laws?
- How will investigation results be used?



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## Action Steps

- Discipline & Incentives
- How will you discipline employees for consumption of cannabis? Does it matter whether it is medical or recreational?
- Will cannabis use make employees ineligible for incentive programs and on what terms?
- Will you establish a process for determining whether an employee should be terminated for cannabis consumption? What might that process look like in the different states your business operates in?



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## In Closing...

- ▣ Questions, Answers and Shareable Nuggets?
- ▣ Final Thoughts...

