

# MARIJUANA IN THE WORKPLACE



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# LEGAL STATUS OF MARIJUANA IN THE DISTRICT

- Marijuana possession is legal in the District under certain circumstances.
- D.C. law restricts only pre-employment marijuana testing. Employers may continue to restrict employees' marijuana use.
- Federal law prohibits marijuana usage, and the Americans with Disabilities Act most likely does not protect medical marijuana users.
- The District is **not** among states that protect medical marijuana users from employment discrimination by statute.
- **However, courts have differed on whether state anti-discrimination laws protect medical marijuana users.**

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# NON-MEDICAL MARIJUANA

- Under District law, a person at least 21 years of age may:
  - Possess up to 2 ounces of marijuana for personal use
  - Transfer (but not sell) up to 1 ounce of marijuana to another person
  - Cultivate up to 6 plants at home, with no more than 3 being mature
  - Use or sell marijuana paraphernalia
- Sales, public use, and driving under the influence are illegal.
- Employers may still restrict marijuana use by employees.

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# MEDICAL MARIJUANA

- Under D.C. law, a qualifying patient may possess and administer marijuana to treat a qualifying medical condition in the patient's residence, or, with permission, in another individual's residence or medical treatment facility.
- A qualifying patient must obtain a registration identification card from the D.C. Department of Health.

# PRE-EMPLOYMENT MARIJUANA TESTING

- D.C. law prohibits employers from requiring a prospective employee to submit to a drug test for marijuana use **as a part of the application process**, unless required by law.
- Employers may drug test **only after** a conditional offer is made.
- Businesses remain able to test their employees and fire them if they test positive for marijuana.

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# DIVERGING LAW ON MEDICAL MARIJUANA

In *Coats v. Dish Network, LLC*, 350 P.3d 849 (Colo. 2015), the Colorado Supreme Court held that, despite state law authorizing medical marijuana and prohibiting discharge for engaging in “lawful activities” outside of work:

- Employee violated employer’s zero-tolerance drug policy by using medical marijuana.
- Medical marijuana use is not a “lawful activity” as it is prohibited under federal law.
- Businesses can fire employees for the use of medical marijuana—even if the use was while the employee was off-duty.

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# DIVERGING LAW ON MEDICAL MARIJUANA

- Several states expressly prohibit employment discrimination based on an employee's status as a medical marijuana registrant or user.
- Several state courts have found that such protections exist even in the absence of an express statutory provision.
- *Barbuto v. Advantage Sales & Marketing, LLC*, 78 N.E.3d 37 (Mass. 2017): Under Massachusetts disability law, an employer must engage in an interactive process with a medical marijuana user and may have to allow medical marijuana use as a reasonable accommodation, unless there is undue hardship.
- *Callaghan v. Darlington Fabrics Corp.*, CA No. PC-2014-5680 (R.I. Super. Ct. May 23, 2017): Rhode Island anti-discrimination law protected a medical marijuana user from employment discrimination for using medical marijuana.

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## MORE EMPLOYER PRESENTATIONS

- General D.C. Employment Law
- D.C. Unemployment Defense
- D.C. Human Rights Act
- D.C. Sick and Safe Leave
- D.C. Family and Medical Leave
- Sexual Harassment
- Investigations and Discipline
- Best Practices for Policies and Procedures
- Form I-9
- Joint Employment
- Universal Paid Leave

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