




Legalization of Cannabis in New Jersey

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Today's Discussion

- Part I:** Lay of the Land
- Part II:** Recreational Use at the Workplace
- Part III:** Medicinal Use at the Workplace
- Part IV:** Drug-Free Policies/Drug Testing
- Part V:** Duty to Accommodate

Questions & Answers

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FEDERAL STATUS

CONTROLLED SUBSTANCE ACT

- Schedule 1 Drug Classification
- 2018 FARM Bill
- The MORE Act




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FEDERAL STATUS

IMPACT OF FEDERAL PROHIBITION

- Lack of access to banks
- Inability to deduct normal business expenses
- Risk of visa revocation for immigrants involved in the cannabis industry
- Warnings letters from the FDA
- Inability to register and prosecute federal trademark claims
- Inability to register through SEC



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EMERGING MARKET

States where cannabis is legal

Legend: ■ Recreational ■ Medical ■ Voted for recreational & medical ■ Voted for medical ■ Legal

Currently, recreational use of cannabis is legal for adults in 11 states and Washington D.C.

New Jersey, Arizona, Montana, and South Dakota just voted to legalize recreational use.

Medical Marijuana is legal in 33 states.

South Dakota and Mississippi also voted in favor of a medical-cannabis program.

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NEW JERSEY STATUS

Constitutional Amendment to Legalize Marijuana

NEW JERSEY STATE BALLOT QUESTION: LEGALIZE MARIJUANA

YES NO

CBSPhilly.com

STATE QUESTION NO. 1
CONSTITUTIONAL AMENDMENT TO LEGALIZE MARIJUANA

Do you approve amending the Constitution to legalize a controlled form of marijuana called "cannabis"?

Only adults at least 21 years of age could use cannabis. The State commission created to oversee the State's medical cannabis program would also oversee the new, personal use cannabis market. Cannabis products would be subject to the State sales tax. If authorized by the Legislature, a municipality may pass a local ordinance to charge a local tax on cannabis products.

INTERPRETIVE STATEMENT

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NEW JERSEY STATUS

"New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act"

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New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act"

- Decriminalizes possession and use
- For adults 21 years or older
- Must purchase directly from licensee
- Cannot smoke/vape in public
- Employment protection



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New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act"

- Cannot drive under the influence
- Smell is no longer probable cause
- Automatic expungement
- May operate a cannabis business
- Tax cannabis items



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CANNABIS REGULATORY COMMISSION (CRC)

- The CRC is a panel of five appointed individuals who will oversee the development, regulation, and enforcement of use and sale of cannabis in New Jersey.
 - Chair
 - Vice Chair
 - Three add'l members
- Executive Director of the CRC.



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CANNABIS REGULATORY COMMISSION (CRC)










Dianna Houenou * Krista Nash * Sam Delgado * Maria Del Cid * William Wallace (not pictured) * Jeff Brown

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CANNABIS LICENSES


Currently, there are six classes of licenses:

1. Class 1 Cultivator license
2. Class 2 Manufacturer license
3. Class 3 Wholesaler license
4. Class 4 Distributor license
5. Class 5 Retailer license
6. Class 6 Delivery license



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MICROBUSINESS LICENSE

- Under the law, at least 25% of the total number of licenses in each class will be reserved solely for microbusinesses.
- “Microbusiness” is defined as a person or entity with business operations that employ no more than 10 employees.
- Microbusiness cannot process more than 1,000 cannabis plants each month, operate a cannabis establishment that occupies more than 2,500 square feet, or acquire more than 1,000 pounds of cannabis in dried form for retail, resale, or processing each month.


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TAXES

- Cannabis items are subject to New Jersey's sales tax (i.e., 6.625%).
- Local municipalities may impose an additional tax of up to 2%.
- A Social Equity Excise Fee may also be assessed on Cultivators, in the amount of 1/3 of 1%.



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**Part II: RECREATIONAL USE AT
THE WORKPLACE**



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RECREATIONAL USE AT THE WORKPLACE

Under the Recreational Use Law:

- Dealerships can ban use of cannabis at the workplace and during work hours.
- Dealerships can also prohibit possession of cannabis at the workplace



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RECREATIONAL USE AT THE WORKPLACE

However . . .

- Dealerships cannot take adverse employment action against existing employees for off-duty use (or non-use).
- Dealerships cannot refuse to hire applicants for recreational use of cannabis (or non-use).

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RECREATIONAL USE AT THE WORKPLACE

EXCEPTIONS:

- If there's a "provable adverse impact on an employer subject to the requirements of a federal contract, then the employer may revise their employee prohibitions consistent with the federal law, rules, and regulations."
- Examples
 - losing federal funding



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RECREATIONAL USE AT THE WORKPLACE

Dealerships should also consider the following points:


- Don't force applicants to disclose cannabis related adjudications.
 - Civil penalties of up to \$10K
- Don't ask about any criminal history during initial stages of application process, unless you have less than 15 employees.
 - "Ban the Box"



JOB APPLICATION

☐ Have you ever been convicted of a criminal offense?

Ban the BOX



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NJ's MEDICAL MARIJUANA ACT

Initially enacted on October 1, 2010

- "New Jersey Compassionate Use Medical Marijuana Act"

Later revised on July 2, 2019

- "Jake Honig Compassionate Use Medical Cannabis Act"

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JAKE HONIG COMPASSIONATE USE MEDICAL CANNABIS ACT

- Permits the legal use of cannabis for medically qualifying conditions.
- Examples of qualifying conditions:
 - Anxiety
 - Migraine
 - Terminal illness
 - Cancer
 - Glaucoma
 - Severe chronic pain
 - Epilepsy
 - Multiple Sclerosis
 - Inflammatory bowel disease
 - PTSD

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JAKE HONIG COMPASSIONATE USE MEDICAL CANNABIS ACT

Job Protections under the Act:


*"It shall be unlawful to take **any adverse employment action** against an employee who is a registered qualifying patient based solely on the employee's status as a registrant with the commission."*





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JAKE HONIG COMPASSIONATE USE MEDICAL CANNABIS ACT

The Act defines "adverse employment action" as:

- refusing to hire or employ an individual;
- barring or discharging an individual from employment;
- requiring an individual to retire from employment; and
- discriminating against an individual in compensation or in any terms, conditions, or privileges of employment.

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**WORKPLACE
NO DOPE
ZONE**




**PART IV: DRUG-FREE POLICIES &
DRUG TESTING**

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DRUG FREE WORKPLACE POLICIES

- The laws recognize that federal contracts have prohibitions that Dealerships must follow.
- For example, most federal contractors are required to comply with the federal Drug-Free Workplace Act (DFWA), which precludes the possession or use of controlled substances at work sites.





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DRUG-FREE WORKPLACE POLICIES

- Dealerships covered by the federal drug-free workplace requirements must have a drug and alcohol testing policy that is strictly enforced and follows governmental guidelines.
- Even if federal drug-free workplace requirements do not apply, an employer should draft or update its policies to clarify its expectations regarding cannabis usage, so that employees are on notice about the requirements and the consequences for non-compliance.

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DRUG TESTING

- The law for recreational use allows drug testing based on a reasonable suspicion that an employee used cannabis on the job and for post work related accidents.
- Drug test may also be done randomly, as part of a pre-employment screening of applicants, or regular screening of current employees.



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DRUG TESTING

- The methodology used must produce results that are scientifically reliable, which suggests using methods such as urinalysis, blood sampling, or saliva testing.
- However, those tests cannot detect current impairment, only prior use.




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DRUG TESTING

- The recently enacted law also requires a physical examination of the individual as a condition of assessing impairment.
- The examination must be conducted by a qualified individual who meets the training mandates for a so-called *Workplace Impairment Recognition Expert Certification*.
- This individual will be certified after completing training on detecting or identifying use and impairment by cannabis or other intoxicating substances.




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DRUG TESTING

- By using this procedure, the bill aims to protect employees from adverse actions, while giving Dealerships the flexibility to discipline an impaired employee, under defined circumstances.
- *Just Cause Discipline*



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ADVERSE EMPLOYMENT ACTION

New Jersey law permits Dealerships to take adverse action if:

- (1) an employee possesses or uses an intoxicating substance while on duty; or
- (2) if such use would require an employer to commit any act that would cause the employer to be in violation of federal law. .



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**WHEN DUTY TO ACCOMMODATE
AND MEDICAL MARIJUANA
INTERSECT**



**PART V: DUTY TO
ACCOMMODATE**


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DUTY TO ACCOMMODATE

- The New Jersey Law Against Discrimination (LAD) prohibits disability discrimination in employment.
- Dealerships must “make a reasonable accommodation to the limitations of an employee or applicant who is a person with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business.”
- To determine what appropriate accommodation is necessary, the employer must initiate an informal “interactive process” with the employee.



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DUTY TO ACCOMMODATE

New Jersey's previous Medical Marijuana Law contained language stating:

[N]othing in [the Act] shall be construed to require . . . an employer to accommodate the medical use of marijuana in any workplace.

The Law was later amended in 2019 and the language was removed from the current version.



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DUTY TO ACCOMMODATE

Are Dealerships required to accommodate an employee's use of medical marijuana?



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DUTY TO ACCOMMODATE

Are Dealerships required to accommodate an employee's use of medical marijuana?


In New Jersey . . .

- No obligation to accommodate on-duty use
- May have to accommodate off-duty use.
 - See *Wild v. Carriage Funeral Holdings*



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DUTY TO ACCOMMODATE

Wild v. Carriage Funeral Holdings (Facts)

- A licensed funeral home director gets into a car accident driving during funeral.
- He goes to the ER, his dad discloses that he uses medical marijuana off-duty because of a cancer diagnosis about a year before.
- Employer requires him to pass a drug test to return to work.
- He is terminated for two reasons: the presence of marijuana in his system and the failure to disclose the use of a substance that might impact his ability to do his job.
- He sues, claiming violations of the Law Against Discrimination.

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DUTY TO ACCOMMODATE

Wild v. Carriage Funeral Holdings (Decision)

- The Appellate Division held the employer doesn't have to allow use on-site but must accommodate the employee's off-duty use of medical marijuana.
- The NJ Supreme Court adopted the Appellate Division's decision that the failure to accommodate claims should be considered under the law against discrimination standard.
- The NJ Supreme Court also added that nothing in the medical marijuana law requires acceptance of on-site use or the operation of heavy machinery while under the influence.

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DUTY TO ACCOMMODATE

Takeaways

- Lawsuits surrounding cannabis use are likely to be focused on the types of reasonable accommodations Dealerships should make and what jobs are too safety-sensitive to permit an accommodation for medical marijuana use.

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THE WRAP UP

QUESTIONS?

CONCERNS?

COMMENTS?

THANK YOU!

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