

Cannabis and the Workplace

Presented by Megan L., JD

May 19, 2022

Not tax or legal advice | Powered by **Mineral**



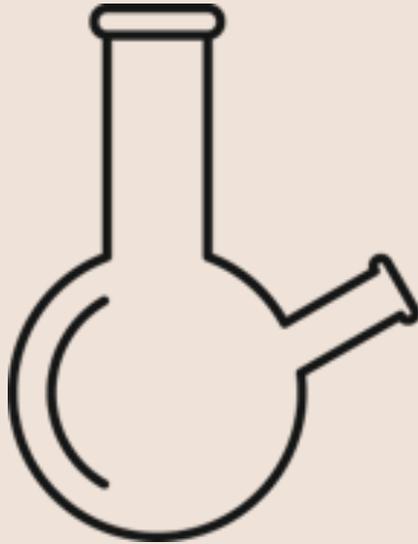
Welcome to the Webinar!

- We will email you the recording and slides within 24 hours.
- Please participate in our poll.
- Please use the Q&A box for questions.

Agenda

- Cannabis Basics
- Federal Laws
- State Cannabis Laws
- *Other* State Laws That Might Provide Cannabis Protections
- Policy Considerations

Cannabis ABCs



THC
(psychoactive)



CBD
(non-psychoactive, mostly for medicinal use)

Federal Laws



Controlled Substances Act

- Schedule I
 - Most restrictive = high potential for abuse and no accepted medical use
 - Cannabis, heroin, LSD, ecstasy
- Schedule V
 - CBD oils < 0.1% THC *and* approved by the FDA, Robitussin





Department of Transportation

- Requires covered employees to be tested for cannabis
- Failing drug test =
 - Remove employee from safety-sensitive functions
 - Employee cannot perform safety-sensitive functions until they meet certain conditions
- Does **not** require termination if an employee tests positive



Drug Free Workplace Act

- Generally applies to federal contractors and federal grant recipients
- Good faith effort to provide drug-free workplaces
- Specific requirements, e.g., reporting drug convictions
 - Does **not** require testing
 - Does **not** require termination if an employee tests positive



Americans with Disabilities Act

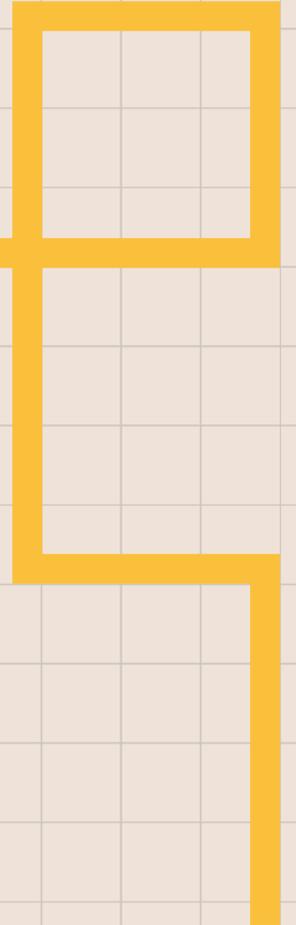
- Prohibits discrimination against applicants and employees who have disabilities
- Generally requires reasonable accommodations
- Does **not** protect the current use of illegal drugs
- **Does** protect the current use of legal drugs, likely including CBD



Title VII of the Civil Rights Act of 1964

- Applies to employers with 15 or more employees
- Generally requires reasonable accommodations for religious beliefs
- *Possible* argument for religious accommodations for cannabis

State Cannabis Laws



Cannabis Law Protects Off-Duty Cannabis Use



- Cannabis law prohibits employment discrimination on the basis of cannabis
- Usually for medical cannabis, but increasingly for recreational cannabis
- Often exceptions for on-duty impairment, if the employer would lose a federal contract or violate a federal law



Cannabis Law Says It Doesn't Protect Off-Duty Cannabis Use

- The cannabis law says it doesn't restrict employers from having or enforcing their drug policies
- The cannabis law says it doesn't require employers to accommodate use
- But wait! *Other* laws might apply that have employment protections

Cannabis Law Doesn't Address Employment

- Cannabis is legal, but the law doesn't address employment issues
- Employees don't have employment protections under these types of laws
- But wait! *Other* laws might apply that have employment protections





Poll Question

What's your preferred cannabis policy?

Other State Laws That Might Provide Cannabis Protections



Drug Testing

- Some states have drug testing laws that restrict an employer's options
- Circumstances when testing is allowed (reasonable suspicion, random)
- Type of testing allowed or not (urine, hair, saliva)
- Obligation to offer rehab if an employee fails a test





Disability Discrimination

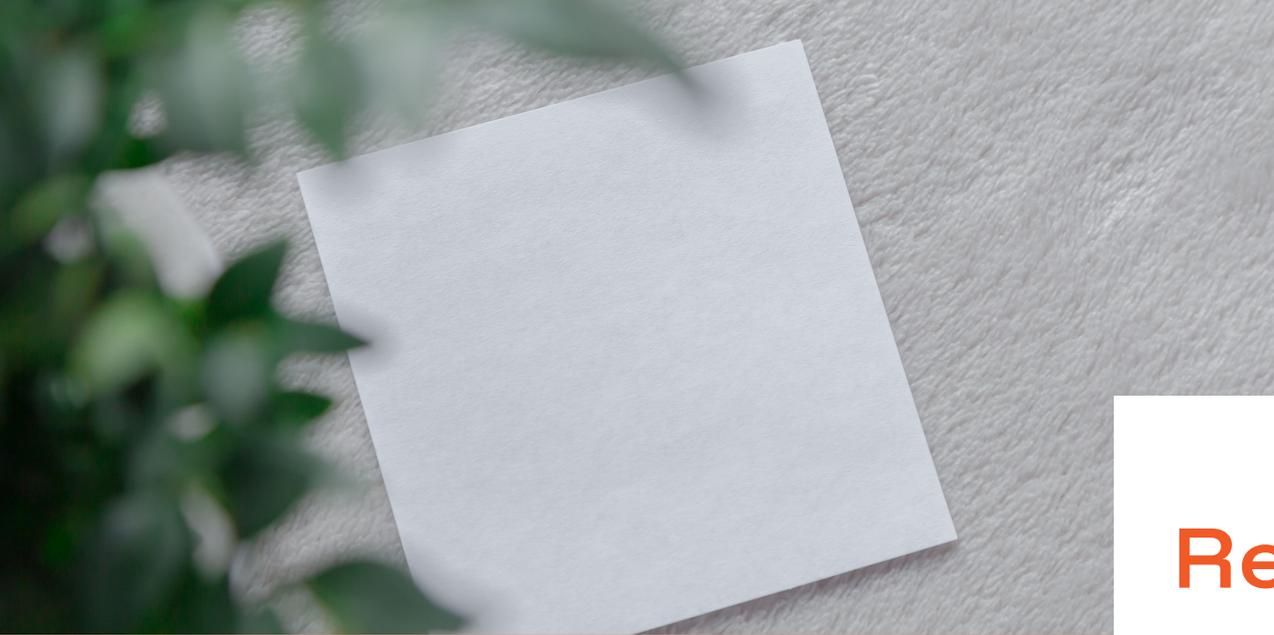
- State disability discrimination laws generally require employers to accommodate employees with disabilities
 - If an employee qualifies as a patient for medical cannabis, they *probably* have a disability
 - Examples: Massachusetts, New Hampshire
- 





Lawful Off-Duty Conduct

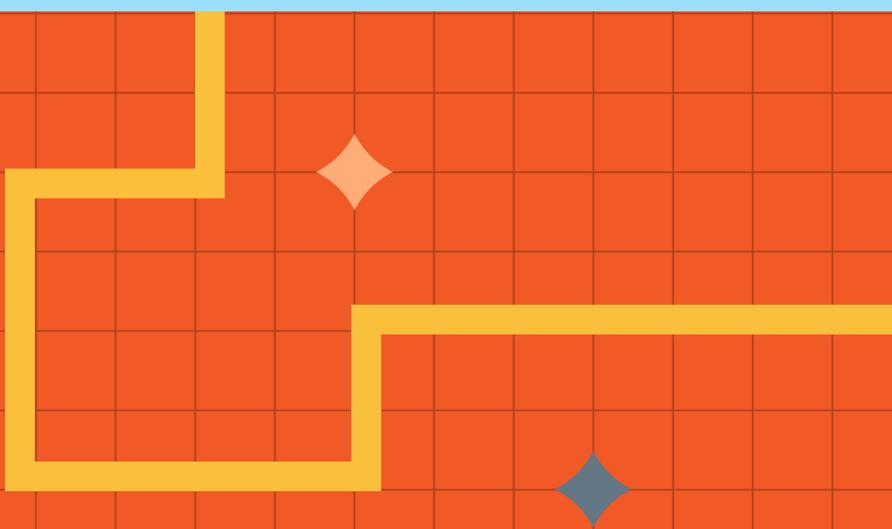
- Some states prohibit employers from disciplining employees because of lawful off-duty conduct or using lawful products
- Latest trend with legalization, e.g., MT, NY



Religious Discrimination

- State version of Title VII: employers generally have to accommodate employees' religious beliefs and practices, absent undue hardship
- Cannabis churches

Wrongful Discharge



- Wrongful discharge in violation of public policy
 - Exception to at-will employment
 - Case law

Policy Considerations



Compliance Framework



- Cannabis law
 - Exceptions to protections?
- Drug testing law (state, DOT)
- Disability discrimination law (state)
- Lawful off-duty conduct law (state)
- Religious discrimination law (federal, state)
- Wrongful discharge (state)



Policy Brainstorming

- Industry norms
- Geographic locations
- Job-based distinctions
- On-duty versus off-duty use

Policy Content

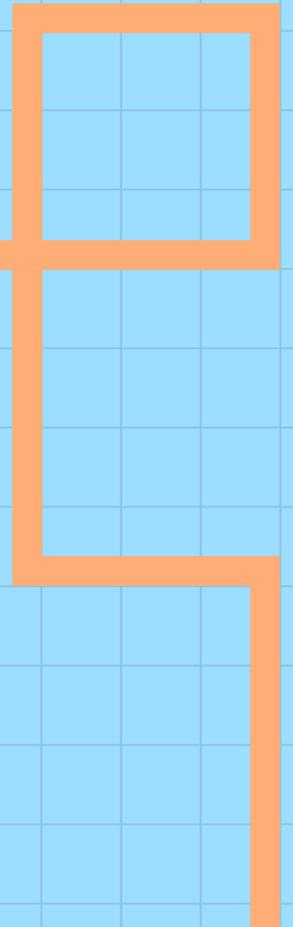
- Spell out prohibited behavior
- Address cannabis specifically
- Identify circumstances that result in drug testing
- State potential discipline for policy violations

Policy Implementation

- Train managers
- Communicate to employees
- Ensure non-discriminatory application



Q+A



Thank you!

