

Eight States Will Vote On New Marijuana Laws On Election Day 2016

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Currently, twenty-five states and the District of Columbia have medical marijuana laws, while four states and the District of Columbia have legalized marijuana for recreational use. On Election Day 2016, eight more states will consider adopting such laws. Here is a brief summary of those proposed laws, focusing on the implications for employers:

Medical Marijuana

1. **Arkansas** – The Arkansas Medical Cannabis Act would allow the medical use of marijuana by patients who suffer from qualifying medical conditions. The law does not permit a qualifying patient to be “denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for medical use of cannabis in accordance with [the law].” In addition, “[a]n employer shall not discriminate against an individual in hiring, termination, or any term or condition of employment, or otherwise penalize an individual, based upon the individual’s past or present status as a Qualifying Patient.” However, the law does not require an employer to accommodate the use of marijuana in the workplace or to permit an employee to work while under the influence of

marijuana. The law also prohibits undertaking any task while under the influence of marijuana “when doing so would constitute negligence or professional malpractice,” and further prohibits the operation of a vehicle while under the influence of marijuana.

2. **Florida** – In Florida, a proposed constitutional amendment provides that individuals with certain debilitating medical conditions may use marijuana as prescribed by a physician. The law does not require employers to permit the use of marijuana in the workplace, and prohibits the operation of a vehicle while under the influence of marijuana.
3. **North Dakota** – The North Dakota Compassionate Care Act would permit marijuana use by patients with debilitating medical conditions. The law states that medical marijuana users are not relieved from criminal prosecution or civil penalty for possession, use, distribution or transfer of marijuana in the workplace. In addition, medical marijuana users are not relieved from liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of marijuana.

Recreational Marijuana

1. **Arizona** – Arizona’s Regulation and Taxation of Marijuana Act seeks to treat marijuana in a manner similar to alcohol. The law would permit individuals 21 and older to possess or use up to one ounce of marijuana and to possess up to six marijuana plants. However, the law does not require an employer to allow or accommodate the possession or consumption of marijuana or marijuana products in the workplace and does not affect the ability of an employer to enact and enforce workplace policies restricting the consumption of marijuana and marijuana products by employees. The law also does not prevent the imposition of civil or criminal penalties for operating a vehicle while under the influence of marijuana, or engaging in any task while impaired by marijuana that would constitute negligence or professional malpractice. But employers should take note that the law also states: “a person may not be penalized in this state for an action taken while under the influence of marijuana or a marijuana product solely because of the presence of metabolites or components of marijuana in the person’s body or in the urine, blood, saliva, hair or other tissue or fluid of the person’s body.”
2. **California** – California’s Proposition 64, the Adult Use of Marijuana Act, would legalize the non-medical use and possession of up to one ounce of marijuana, up to 6 marijuana plants, and up to 8 grams of concentrated marijuana products for those 21 and older. The law states that it does not alter or amend the rights and obligations of public and private employers to maintain a drug and alcohol-free workplace and to have policies prohibiting the use of marijuana by employee and applicants. The law further does not require employers to permit or accommodate the use of marijuana in the workplace, or prevent employers from complying with state or federal law. Smoking or ingesting marijuana is prohibited in public or while driving or riding in a vehicle.
3. **Maine** – Maine’s Marijuana Legalization Act would permit individuals 21 and older to use and possess up to 2-1/2 ounces of marijuana and accessories, and to cultivate plants in the home, among other things. The law states that it does not require employers to permit or accommodate the use, consumption, possession, trade, display, transportation, sale or growing of marijuana in the

workplace. In addition, the law will not impact an employer's ability to enact and enforce workplace policies restricting the use of marijuana by employees or to discipline employees who are under the influence of marijuana in the workplace. Despite that language, however, the law prohibits employers from refusing to employ a person solely because that person consumed marijuana outside the employer's property.

4. **Massachusetts** – Massachusetts' The Regulation and Taxation of Marijuana Act would permit individuals 21 and older to use or possess up to one ounce of marijuana, keep up to 10 ounces of marijuana at home, and to cultivate up to six marijuana plants. The law does not require an employer to permit or accommodate conduct allowed by the law and does not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees. The law also does not amend existing penalties for the operation of a vehicle or machinery while impaired by marijuana or marijuana products, or for performing a task while impaired by marijuana that would constitute negligence or professional malpractice.
5. **Nevada** – Nevada's Regulation and Taxation of Marijuana Act would permit individuals 21 and older to use or possess up to one ounce of marijuana, and possess or cultivate up to 6 marijuana plants. The law does not prohibit a public or private employer from maintaining, enacting and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under the law. Additionally, the law does not prevent the imposition of any civil or criminal penalty for operating a vehicle while impaired by marijuana, or undertaking any task under the influence of marijuana that constitutes negligence or professional malpractice.

Even if all of these laws pass on Election Day, the legal landscape for employers will not change very much, particularly because marijuana still is illegal under federal law. In most states, employers still are permitted to implement policies prohibiting the use of marijuana and may take adverse actions against those who use marijuana, even for medical reasons. However, an increasing number of states are enacting laws prohibiting discrimination against medical marijuana users, and now it appears that at least two states – Arizona and Maine – are proposing laws that would provide workplace protections to recreational marijuana users in certain circumstances. Employers should follow the Election Day results carefully and review their drug and alcohol testing policies to determine whether any modifications are required.

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